



## Oversight Procedure 36 - Buy America Compliance Review

---

### 1.0 Purpose

The purpose of this Oversight Procedure (OP) is to describe the review, analysis, and recommended procedures and reporting requirements that the Federal Transit Administration (FTA) expects from the Project Management Oversight Contractor (PMOC) with regards to the Project Sponsor's compliance with Buy America requirements for procurements in excess of \$150,000 (2 CFR §200.88). These procurements are for **“all iron, steel, and manufactured products used in the project”**.<sup>1</sup> The instructions in this OP subordinate to the regulations in 49 CFR 661 - Buy America Requirements and 49 CFR 663 - Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.

### 2.0 BACKGROUND

#### 2.1 Overview

A number of public transit agencies have experienced difficulties in understanding the nuances and complexity of FTA's Buy America Requirements (which are unrelated to the Buy American Act of 1933, which governs direct Federal procurements). FTA's Buy America requirements specifically apply to third-party procurements by state and local governments using FTA funds.

The first Buy America provision was included in the Surface Transportation Assistance Act of 1978. Currently codified at 49 U.S.C. 5323(j), this provision prohibits FTA from obligating funds for a project unless the steel, iron, and manufactured products used in the project are produced in the United States.<sup>2</sup> For steel and iron end products to be considered produced in the United States, all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.<sup>3</sup>

For manufactured products to be considered “manufactured” in the United States, all of the manufacturing processes must take place in the United States, and the components of the product must be of U.S. origin (a component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents).<sup>4</sup>

For buses, railcars, and other rolling stock (including train control, communication, and traction power equipment), at least 60% of the components, calculated by cost, must be produced in the United States and final assembly must take place in the United States.

---

<sup>1</sup> 49 CFR § 661.5.(a)

<sup>2</sup> 49 U.S.C. Section 5323(j)(2)(C)

<sup>3</sup> 49 CFR 661.5(b)

<sup>4</sup> 49 CFR 661.5(c)

## 2.2 Buy America Requirements for Revenue Service Rolling Stock

In addition to the requirements outlined above, a recipient purchasing rolling stock to carry passengers in revenue service must ensure that a pre-award audit as described in 49 CFR 663.21 is complete before the recipient enters into a formal contract for the purchase of rolling stock. Similarly, recipients purchasing revenue service rolling stock must also ensure that a post-delivery audit as prescribed in 49 CFR 663.31 is complete before the title to the rolling stock is transferred to the recipient.

## 3.0 OBJECTIVES

The primary objective of this procedure is to provide clear, consistent instructions to PMOCs engaged in overseeing Project Sponsor's compliance with Buy America requirements by verifying that:

- The grantee has and continues to “**adhere to the Buy America clause set forth in its grant contract with FTA**” in accordance with 49 CFR § 661.13.(a),
- The grantee has included “**in its bid or request for proposal specification for procurement within the scope of this part an appropriate notice of the Buy America provision, and that such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed**” **Certificate of Compliance with Buy America Requirements** (49 CFR § 661.6) in accordance with 49 CFR § 661.13.(b),
- The grantee has confirmed and verified that all bidders and offerors meet the requirements of their original **Certificate of Compliance with Buy America Requirements** or their **Certificate of Compliance with Buy America Requirements** submitted with its final offer and are not permitted to change their certification after bid opening or submission of a final offer in accordance with 49 CFR § 661.13.(c),
- The grantee has procedures and processes in place to verify Buy America Compliance for manufactured products **prior to delivery, installation, and payment to the Contractor**,
- Each bidder or offeror has submitted with bids or offers a completed Buy America certificate, and,
- During the manufacturing process, each bidder or offeror has complied with the applicable Buy America requirements.

When reviewing the Project Sponsor's Buy America Audit, the objective is to confirm the Project Sponsor's investigation and approval of the Manufacturer's report of their plan for production of the rolling stock and the compliance with the regulations of that plan.

This procedure provides PMOCs with direction regarding how to perform the following:

- 1) Review to ensure that Project Sponsor has all necessary Buy America and related certifications, as they relate to the procurement of all iron, steel, and manufactured products used in the project ;
- 2) Review and make an assessment of manufacturer's data including Project Sponsor's efforts to identify component and sub-component values;
- 3) Determine manufacturer's compliance of the requirements for final assembly in the United States;

- 4) Identify if the Project Sponsor agreed or disagreed with the manufacturer's reporting of components including where they are manufactured and the origin of all of the sub-components;
- 5) Identify if the Project Sponsor investigated any component that is inconsistent with the components listed in Appendix B to Sec. 661.11 for buses and 49 CFR section 661.11, Appendix C for rail rolling stock;
- 6) As requested, monitor Buy America and related provisions beginning with the Final Design or at a Letter of No Prejudice (LONP) and before vehicles are delivered and placed into revenue service;
- 7) Check Project Sponsor's and manufacturer's files and records, when needed, to assure early detection of any deficiencies in Buy America regulations compliance;
- 8) Ensure timely intervention when there are indications that Buy America might not be met or the Project Sponsor's audit is inadequate;
- 9) Guide Project Sponsors to the regulations when manufacturers are found to be deficient in Buy America or other related requirements;
- 10) Visit the final assembly sites when requested and be prepared with tangible information and references to FTA regulations that will allow the PMOC to:
  - a) Validate the accuracy, and authenticity of all Certificates of Compliance with Buy America Requirements, and verifying compliance during manufacturing process (for all procurements).
  - b) Accurately evaluate Buy America audit results for compliance (for rolling stock procurements);
- 11) Request FTA intervention when Buy America Audit reviews uncover deficiencies; and provide reporting protocols to be adopted;
- 12) Participate in First Article Inspections of rolling stock or components that are near the requirement to be 60% domestic. This is to confirm components or sub-component source manufacturing and manufacturing site.

In addition to reviewing specific bus and/or rail related audits, PMOC will be directed to evaluate general compliance for systems equipment, other manufactured products, and iron and steel.

## **4.0 REFERENCES**

The following are the principal but by no means the only references to Federal legislation, regulation and guidance with which the PMOC should review and develop a solid understanding as related to the Project Sponsor's project work being reviewed under this OP.

### **4.1 Legislative**

- The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, or SAFETEA-LU, Pub.L. 109-59
- Moving Ahead for Progress in the 21st Century, or MAP-21, P.L. 112-141

## 4.2 United States Code

- 49 U.S.C. Chapter 53, specifically, section 5323(j)

## 4.3 Regulations ([http://www.fta.dot.gov/legislation\\_law/12921.html](http://www.fta.dot.gov/legislation_law/12921.html)).

- Buy America Requirements, 49 C.F.R. Part 661
- Pre-Award and Post-Delivery Audits, 49 C.F.R. Part 663

## 4.4 Guidance

- FTA's Buy America Audit Handbooks ([http://www.fta.dot.gov/legislation\\_law/12921.html](http://www.fta.dot.gov/legislation_law/12921.html)).

## 5.0 PROJECT SPONSOR SUBMITTALS

The following are to be obtained by the PMOC from the Project Sponsor for performance of this review:

### For all procurements:

- Documentation verifying compliance of systems equipment and manufactured products.
  - Buy America Compliance certification (see 49 CFR § 661.6);
    - Oversight activities report(s) prepared by the Project Sponsor, including internal verification of observance.
- For each awarded and active contract for all iron, steel, and manufactured products used in the project:
  - The Project Sponsor will allow the PMOC to verify all required Buy America certificate have been submitted.
  - The Project Sponsor will allow the PMOC to determine the proposed or expected start and end of manufacturing for each iron, steel, and manufactured products used in the project.

### For rolling stock procurement:

- Pre-Award Audit (See Appendix B for examples of required certifications);
  - Pre-award Buy America Compliance certification;
  - Pre-award Purchaser's Requirements certification;
  - Manufacturer's Federal Motor Vehicle Safety certification, where appropriate;
  - Pre-award Buy America audit report prepared by the Project Sponsor. This is based on manufacturer supplied reporting.
- Intermediate Audit, when applicable;
  - Interim Buy America audit report prepared by the Project Sponsor. This is based on manufacturer supplied reporting.
- Post-Delivery Audit (See Appendix B for examples of required certifications);
  - Post-Delivery Buy America Compliance certification;
  - Post-Delivery Purchaser's Requirements certification;
  - Manufacturer's Federal Motor Vehicle Safety certification, where appropriate.

- Post-delivery audit report prepared by the Project Sponsor. This is based on manufacturer supplied reporting.
- Post-Delivery Domestic Content Monitoring
  - Resident Inspector Reports in accordance with 49 CFR §663.37.(a).

## **6.0 SCOPE OF WORK**

For all assigned OP 36 reviews, the PMOC is responsible for reviewing and reporting on the presence, accuracy, and authenticity of all Certificates of Compliance with Buy America Requirements, and verifying compliance during manufacturing process.

For all assigned OP 36 reviews, the PMOC is responsible for reviewing and reporting on the Project Sponsor’s audit report (for rolling stock procurements) and should examine the Project Sponsor’s certifications and supporting documents (for all procurements), with all due diligence. Attention shall be focused on ensuring the Project Sponsor’s Buy America team has “drilled down” to the lowest level required, in order to demonstrate that the 60% rule has been followed and the content claimed is valid.

The PMOC must verify/confirm that the Project Sponsor and contractor(s) are meeting the requirements of any conditions/agreement stipulated by the FTA.

The FTA should assure that the Project Sponsor understands that failure to comply with Buy America requirements can put the Project Sponsor’s FTA grant in jeopardy.

The PMOC shall ensure that the vehicle component manufacturing requirements are/were met, and where there is doubt (for instance where major sub-assemblies of a component are foreign-made but incorporated during the domestic vehicle final assembly), that these concerns are identified and brought to the Project Sponsor’s attention for clarification. If the Project Sponsor cannot justify the discrepancy, the PMOC should report this finding to the FTA for a determination.

The PMOC shall ensure that the Project Sponsor has required the manufacturers of all iron, steel, and manufactured products used in the project to maintain and periodically update Buy America compliance in a report that tracks the projected and actual Buy America attainment. The PMOC shall ensure that the Project Sponsor has required that the rolling stock manufacturer provides a monthly or at a minimum quarterly update report with a detailed register of components in the rolling stock being procured. The PMOC should report any progress or failure to track components to FTA.

### **6.1 Pre-Award Requirements (Bus & Rail) Buy America and Related Provisions**

For bus and van procurements, the PMOC must confirm that the Project Sponsor has completed three certifications in this Pre-Award process. All three certifications must be in the Project Sponsor’s files for future FTA reviews. These certifications are:

- Pre-Award Buy America Compliance certification;
- Federal Motor Vehicle Safety Standards (FMVSS) certification;
- Pre-Award Purchaser’s Requirements certification.

For rail rolling stock procurements, the PMOC must confirm that the Project Sponsor has completed two certifications in this Pre-Award process. Both certifications must be kept together in the Project Sponsor's files for future FTA reviews. These certifications are:

- Pre-Award Buy America Compliance certification;
- Pre-Award Purchaser's Requirements certification.

### **6.1.1 Pre-Award Buy America Audits**

The PMOC must confirm that the Project Sponsor has certified through Pre-Award audits that the procurement with FTA appropriated funds, of new revenue service buses, rail vehicles, and vans, is Buy America compliant.

The PMOC, as part of their normal oversight activities, should assure the Project Sponsor understands that failure to comply with Buy America requirements can put the Project Sponsor's FTA grant in jeopardy. Project Sponsor's contract documents to acquire the rolling stock must contain language requiring compliance with approved waivers. The supplier's bids/proposals must show compliance that includes any waiver(s) issued to the supplier by FTA or non-compliance.

Pre-award audits are required before a Project Sponsor can enter into a formal contract for the purchase of such rolling stock with a manufacturer. The Pre-Award review period begins when the Project Sponsor issues the solicitation and ends when the Project Sponsor signs a formal contract with the selected manufacturer.

#### **6.1.1.1 Bus and Van**

For the bus portion of the Buy America Pre-Award review, the PMOC must confirm the Project Sponsor has verified that all vehicles will meet the following conditions:

- 1) The cost of all components produced in the United States is more than 60 percent of the total of all bus/van rolling stock components including those in 49 CFR Section 661.11, Appendix B. The following is a list of items that typically would be considered components of a bus. This list is not all-inclusive.
  - 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.<sup>5</sup>

---

<sup>5</sup> 49 CFR 661.11, Appendix B

- 2) Final assembly of the vehicles will take place in the United States; or, the Project Sponsor has obtained from the FTA a waiver letter exempting the buses or a component from FTA's Buy America requirement.
- 3) Project Sponsor's determination that the manufacturer is responsible and capable of building the bus to the Project Sponsor's design and solicitation specification.
- 4) Purchaser's Requirements certification. See description of this requirement in 6.1.2, below.
- 5) First Article Inspections (FAI) of the bus/van rolling stock and components that are near the 60% requirement to be domestic. This is to confirm component or sub-component source manufacturing and manufacturing site.

A two-stage process for bus manufacturing allows the empty bus shell to be transported to the final assembly site. When the transportation is from a domestic bus shell manufacturing facility to final assembly, the cost is domestic. The regulations require that final assembly in the U.S. include, at a minimum, the following requirements described in 49 CFR 661.11 Appendix D (b):

- installation and interconnection of the engine, transmission, axles, cooling and braking systems;
- installation and interconnection of the heating and air conditioning equipment;
- installation of pneumatic and electrical systems, door systems, passenger seats, passenger grab rails, destination signs, and wheelchair lifts; and road testing, final inspection, repairs and preparation of the vehicles for delivery.<sup>6</sup>

The PMOC shall confirm the Project Sponsor's compliance with the above requirements as well as those requirements stipulated on the FTA's website at [http://www.fta.dot.gov/legislation\\_law/12921.html](http://www.fta.dot.gov/legislation_law/12921.html).

#### **6.1.1.2 Rail, All Types**

For the rail portion of the Buy America Pre-Award review, the PMOC must confirm the Project Sponsor has verified that all vehicles will meet the following conditions:

- 1) The cost of all components produced in the United States is more than 60 percent by cost of the total of all rail rolling stock components including those in 49 CFR Section 661.11, Appendix C. The following is a list of items that typically would be considered components of rail rolling stock. This list is not all inclusive.
  - 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

---

<sup>6</sup> 49 CFR 661.11, Appendix D (b)

and draft gear, trucks, journal bearings, axles, diagnostic equipment, and third rail pick-up equipment.<sup>7</sup>

- 2) Final assembly of the vehicles will take place in the United States; or, the Project Sponsor has obtained from the FTA a waiver letter exempting the rail rolling stock or a component from FTA's Buy America requirement.
- 3) Project Sponsor's determination that the manufacturer is responsible and capable of building the rail rolling stock to the Project Sponsor's design and solicitation specification.
- 4) Purchaser's Requirements certification. See description of this requirement in 6.1.2, below.
- 5) First Article Inspections of the rolling stock and components that are near the requirement to be 60% domestic. This is to confirm component or sub-component source manufacturing and manufacturing site.

A two-stage process for rail rolling stock manufacturing allows the transport of the empty car shell to the final assembly site. When the transportation is from a domestic car shell manufacturing facility to final assembly, the cost is domestic. The regulations require that final assembly in the U.S. include, as a minimum the following requirements described in 49 CFR 661.11 Appendix D (a):

- installation and interconnection of propulsion control equipment, propulsion cooling equipment, brake equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, motors, wheels and axles, suspensions and frames;
- inspection and verification of all installation and interconnection work; and
- the in-plant testing of the stationary product to verify all functions.<sup>8</sup>

The PMOC shall confirm the Project Sponsor's compliance with the above requirements as well as those requirements stipulated on the FTA's website at [http://www.fta.dot.gov/legislation\\_law/12921.html](http://www.fta.dot.gov/legislation_law/12921.html).

### **6.1.2 Pre-Award Purchaser's Requirement Audit**

The PMOC must confirm the Project Sponsor has verified that the manufacturer's bid is in compliance with Project Sponsor's solicitation specifications. Further, the PMOC must review the specifications to assure there are no requirements that will impact the ability of the supplier to achieve Buy America compliance.

The PMOC's review shall include assurance that the Project Sponsor's certification includes the most up-to-date language requiring compliance with Buy America. PMOCs are advised to consult the FTA Website ([http://www.fta.dot.gov/legislation\\_law/12921.html](http://www.fta.dot.gov/legislation_law/12921.html)) for recent changes.

The PMOC must also confirm that the Project Sponsor has verified that the vehicle manufacturer is responsible and capable of building the rolling stock to the Project Sponsor's solicitation specifications; and identification by the Project Sponsor of their agreement or disagreement with the

---

<sup>7</sup> 49 CFR 661.11, Appendix C

<sup>8</sup> 49 CFR 661.11, Appendix D (a)



manufacturer's reporting of components, where they are manufactured and the origin of all of the sub-components.

The PMOC must identify components in the Project Sponsor's Pre-Award Buy America review that are at risk of being under the 60% line, moving from domestic to foreign; which could risk lowering the total domestic content below 60% minimum required. For each component near the 60% threshold, the PMOC must assure the Project Sponsor will conduct a line by line review of the sub-components noting the cost and country of origin. FTA may request additional reports on these components. Project Sponsor and PMOC concerns about the accuracy of the claims for final assembly must be identified.

### **6.1.3 Pre-Award FMVSS Requirements Review for Bus and Van**

The PMOC must confirm that the Project Sponsor has obtained a letter from the vehicle manufacturer stating the information that is required for the FMVSS vehicle plaque will be provided.

## **6.2 Intermediate Audit (Bus & Rail)**

The FTA and PMOC should encourage the Project Sponsor to include a requirement for an intermediate Buy America audit in the contract solicitation specification. The intermediate audit should occur early in the production but after the components and their sub-components are procured and under contract. While an intermediate audit is not required by the regulation, it shall be encouraged since it represents the last chance for the Project Sponsor to minimize the risk of potential adverse impact on the total domestic content of the vehicle, by taking corrective action before the end of the production process and prior to delivery; particularly for rolling stock contracts of extended delivery schedules and large order quantities or for any at-risk component(s) with near 60% domestic content that could change from domestic to foreign.

For an intermediate audit, the FTA should require the Project Sponsor to provide the plan for the PMOCs participation in the Project Sponsor's First Article Inspections of components (and subcomponents). The at-risk components (and subcomponents) identified in the Pre-Award Purchaser's Requirement Review are those that are near the 60% domestic content requirement. The FTA should encourage the Project Sponsor and supplier to conduct any FAI at the components (and subcomponents) manufacturing site. This is to get an on site opportunity to confirm sub-component manufacturing source and country of origin. If the FAI is not at the components (or subcomponent) manufacturing site, a follow-up site visit to the component manufacturing site should be discussed with the Project Sponsor and FTA.

An intermediate audit or review should be best conducted after the vehicle manufacturer has signed contracts with component suppliers and as components are getting ready to be sourced. This review is conducted in the same manner as a Post-Delivery Review. When FTA requires a PMOC review of a Project Sponsor's Intermediate Audit, the PMOC shall consult the Post-Delivery review requirements below for performance of this review.

### 6.3 Post Delivery Requirements Audit (Bus & Rail)

The PMOC must confirm the Project Sponsor has completed a Post-Delivery audit, before a vehicle title is transferred from the manufacturer to the Project Sponsor. This section provides specific input that PMOCs can use to evaluate the Project Sponsor's Post-Delivery audit report.

The Post-Delivery audit review period begins when the Project Sponsor signs a formal contract with the selected manufacturer and ends before the title transfer or when the vehicle enters into revenue service.

The PMOC must pay close attention to the pre-award audit report and follow or pursue any changes that the manufacturer may have made that could adversely affect compliance. Examples of such changes are a vendor of at-risk components (and subcomponents) identified in the Pre-Award Purchaser's Requirement Review that was near the 60% domestic content requirement no longer complies with Buy America; or a U.S. vendor going out of business that is replaced with a foreign vendor; or the changing to a new vendor in order to avoid schedule delays and/or contract default and related liquidated damages due to unavailability of needed components or equipment; or the manufacturer's final assembly plan identified in the Pre-Award Audit plan has changed with less than required final assembly. The PMOC must ensure that Project Sponsor's approval of a replacement vendor does not change the requirement to comply with Buy America.

As with the Pre-Award audit, PMOCs must confirm for the bus and van Post-Delivery audit that the Project Sponsor has completed separate certifications. Certifications must be kept in the Project Sponsor's files for future FTA reviews.

The certifications required for bus and van projects are:

- Post-Delivery Buy America Compliance certification;
- Post-Delivery Purchaser's Requirements certification;
- Post-Delivery FMVSS certification.

The PMOC should also review and confirm, for bus and van post-delivery audits that the Project Sponsor has complied with other requirements stipulated on the FTA website at: [http://www.fta.dot.gov/legislation\\_law/12921.html](http://www.fta.dot.gov/legislation_law/12921.html).

For Rail projects, the required certifications are:

- Post-Delivery Buy America Compliance certification;
- Post-Delivery Purchaser's Requirements certification.

The PMOC should also review and confirm, for rail post-delivery audits that the Project Sponsor has complied with other requirements stipulated on the FTA website at: [http://www.fta.dot.gov/legislation\\_law/12921.html](http://www.fta.dot.gov/legislation_law/12921.html).

PMOCs should note that for bus and rail projects, the Buy America Post-Delivery Purchaser's Requirements and the FMVSS certifications are similar to the reviews completed for Pre-Award

certifications, except that the Post-Delivery audit must contain *actual data* instead of the estimated data used in Pre-Award audits. Estimates are not acceptable.

PMOCs should confirm in writing in the report that, for the bus and van Post-Delivery Purchaser's certification, the Project Sponsor has completed visual inspections and road tests to demonstrate that buses meet contract specifications.

- 1) Project Sponsors in urbanized areas with populations of more than 200,000 that purchase more than 10 buses or vans must have an inspector in the production facility during the final assembly process;
- 2) Project Sponsors in urbanized areas with populations of 200,000 or less that purchase more than 20 buses, must have an inspector in the production facility during the final assembly process;
- 3) Bus purchases not meeting the criteria in 1 & 2 above, or purchases of any number of standard production or unmodified vans, require only visual inspection and road test upon delivery.

PMOCs should confirm in writing in the report that, for the Rail Vehicle Post-Delivery Purchaser's certification, the Project Sponsor that is purchasing any number of rail vehicles must certify the following:

- 1) An on-site inspector has performed complete visual inspections and performance tests to demonstrate that the vehicles meet the contract specifications, and;
- 2) A resident inspector was on-site in the manufacturing facility, during the final assembly period and has (a) monitored the final assembly process and (b) completed a final report describing the construction activities and explaining how the construction and operation of the rail vehicles meet the contract specifications.

#### **6.4 Post-Delivery Domestic Content Monitoring**

Post-Delivery Domestic Content Monitoring is a recommended best practice that should occur during the time in the procurement process from when the vehicle manufacturer delivers the first vehicle to the recipient until the vehicle manufacturer transfers title to the last vehicle to the recipient or the recipient puts the last vehicle into revenue service, whichever is first. The recipient should complete the Post-Delivery Audit as described in 49 CFR §663.5.(f) and 49 CFR §663.33 on the first vehicle. FTA recommends that the Post-Delivery Domestic Content Monitoring start when the Post-Delivery Audit for the first vehicle is completed. The Post-Delivery Domestic Content Monitoring should end when the recipient puts the last vehicle into revenue service.

FTA recommends that the resident inspector, or an agent or employee of the recipient should perform the Post-Delivery Domestic Content Monitoring. FTA does not recommend that an agent or employee of the manufacturer perform the Post-Delivery Domestic Content Monitoring. See 49 CFR §663.37(a) for more information.

The purpose of the Post-Delivery Domestic Content Monitoring is to ensure that all vehicles after the first one are compliant with the regulations.

The personnel performing the Post-Delivery Domestic Content Monitoring should monitor all of the following for changes to determine that any changes detected do not affect the compliance of any vehicle:

- Change Orders
- Changes to the Bill of Materials
- Changes to the assembly or manufacturing processes
- Changes to the final assembly location
- Any changes to the cost or origin of any components and subcomponents
- Any change that would affect the domestic content of the vehicle

If the recipient (or its agent) detects any changes, the recipient (or its agent) should perform an evaluation to determine if the domestic content of the vehicles has changed. The recipient (or its agent) should report any changes in domestic content to FTA. If necessary to ensure continued compliance, the recipient (or its agent) should perform an additional Post-Delivery Audit.

## **6.5 Buy America Requirements Review for Systems Equipment**

The PMOC should confirm that the Project Sponsor/ understands that Buy America compliance applies not only to bus and rail vehicles but is also required for procurement of equipment specific to stand-alone systems as defined in 49 CFR 661. This includes Train Control Equipment (49 CFR 661.11.t), Communication Equipment (49 CFR 661.11.u), and Traction Power Equipment (49 CFR 661.11.v).

The procurement of each category of such systems equipment must comply with domestic content and final assembly requirements delineated for the rolling stock procurements in 49 CFR 661 (i.e. if a component of Train Control Equipment is classified as domestic, it must have minimum 60% U.S. content and final assembly must have occurred in the U.S). Further that, domestic manufacture of all federally funded procurements is expected and should be certifiable.

The bill of materials provides a good initial material list. The final assembly of systems projects has been attributed to the field construction.

The Project Sponsor should be able to demonstrate how Buy America compliance is verified, documented, and tracked.

## **6.6 Buy America Requirements Review for Manufactured Products**

The PMOC should confirm that the Project Sponsor understands that Buy America compliance applies not only to bus and rail vehicles but is also required for procurement of all manufactured products, including all iron and steel, as defined in 49 CFR 661. Further that, domestic manufacture of all federally-funded procurements is expected and should be certifiable. The Project Sponsor should be able to demonstrate to FTA and the PMOC how Buy America compliance is verified, documented, and tracked.

The bill of materials provides a good initial material list. The final assembly of infrastructure projects has been attributed to the field construction.

### **6.6.1 Comprehensive Contract Review (Annually after first Contract Award)**

Analyze and evaluate the project and all contracts awarded to create a database of product, and vendor information to support verification and validation of all required “**Certificates of Compliance with Buy America Requirement**” (49 CFR § 661.6).

The contractor shall verify and validate all required “**Certificates of Compliance with Buy America Requirement**” (49 CFR § 661.6) by performing a desk review of the grantees’ Buy America documentation. No Travel is anticipated for this part of the review. The desk review shall provide a summary of the documentation, noting any errors or concerns with the Buy America certifications, audits, or reports, as applicable. The desk review shall also summarize the project and identify areas of concern for Buy America compliance (e.g. sole source items, elements with a small domestic market, items with lacking documentation that should be reviewed in greater detail). The contractor may utilize FTA regional staff to projects/grantees to gain historical background on the project/procurement being reviewed.

Provide report to FTA.

### **6.7 Common Discrepancy Types and Corrective Actions**

The PMOC shall conduct the review of submittals indicated above including any discrepancies noted and make recommendations in a report to FTA for corrective action by the Project Sponsor. After being directed to do so by FTA, the PMOC may discuss these recommendations and possible corrective actions of the discrepancies with the Project Sponsor. Examples of discrepancy types are listed below:

- Discrepancy Type 1: Project Sponsor is deficient and did not have Buy America requirements in its procurement contracts for iron, steel, or manufactured products and/or does not have an FTA approved waiver.
  - Action: Notify FTA of the problem. The PMOC shall advise FTA that the Project Sponsor needs to submit revised purchasing procedures to the FTA.
- Discrepancy Type 2: Project Sponsor is deficient and did not receive all of the required certifications and reviews for its rolling stock procurement. Project Sponsor does not have all of the required certifications in its files confirming the Project Sponsor has done the reviews.
  - Action: Notify FTA of the problem. The PMOC should advise the Project Sponsor to locate all missing and required certifications.
- Discrepancy Type 3: The Project Sponsor is deficient and has not adequately or sufficiently reviewed the manufacturer’s Buy America documentation to determine compliance or intent to comply with requirements.
  - Action: Notify FTA of the problem. The PMOC should advise the Project Sponsor that it should take whatever action is necessary to obtain appropriate certifications, including

performing an “after-the-fact” Pre-Award audit to prove that vehicles will comply with domestic content requirements.

- Discrepancy Type 4: Project Sponsor is deficient and has placed vehicles into revenue service, before completing Post-Delivery audits to verify that the procurement complies with domestic content and final assembly requirements.
  - Action: Notify FTA of the problem. The PMOC should advise the Project Sponsor to provide the FTA with an explanation for how/why vehicles were placed in service before completing the Post-Delivery Audit.
  - Action: The Project Sponsor must complete outstanding audits, without delay and furnish copies of the audit documentation to the FTA.
  - Action: The Project Sponsor must provide assurance to FTA that changes in its procurement procedures have been made so that future procurements will comply with Buy America requirement.
- Discrepancy Type 5: The Project Sponsor is deficient and did not use “in-plant” inspectors or did not perform visual inspections and road tests on bus procurements, for FTA funded procurement, as required.
  - Action: Notify FTA of the problem. The PMOC must advise the Project Sponsor to provide FTA with a complete explanation for why the inspection requirement was not met. FTA will determine the appropriate action.
  - Action: The Project Sponsor must change its procurement procedures and assure the FTA that future procurements will comply with regulations.
- Discrepancy Type 6: The Project Sponsor is deficient because the manufacturer’s assembly process included partial final assembly outside of the U.S. and final assembly activities in the U.S. did not meet minimum requirements for compliance.
  - Action: Notify FTA of the problem. The PMOC must advise the Project Sponsor to provide the FTA with a complete explanation for not complying with the regulations. FTA will determine the appropriate action.
  - Action: The Project Sponsor must provide assurance that future vehicle procurements will be conducted in compliance with FTA Buy America requirements.
- Discrepancy Type 7: The Project Sponsor is deficient because the manufactured products included in systems installed were manufactured outside of the U.S. and no formal written exception is available.
  - Action: Notify FTA of the problem. The PMOC must advise the Project Sponsor to provide the FTA with a complete explanation for not complying with the regulations. FTA will determine the appropriate action.

## **7.0 REPORT, PRESENTATION, RECONCILIATION**

The PMOC shall provide FTA with a separate written report for the PMOC’s review of the Buy America audit conducted by the Project Sponsor. The report shall contain PMOC’s findings including identified discrepancies and suggested corrective actions, analyses, professional opinions, and recommendations, as well as a description of the review activities undertaken. The PMOC shall refer to the checklist in Appendix C as a guide for performing its review.

After FTA's approval, the PMOC may share the report with the Project Sponsor.

The report formatting requirements of OP 01 apply. When necessary, PMOC shall perform data analysis and develop data models that meet FTA requirements using Microsoft Office products such as Excel and Word and use FTA-templates when provided. The PMOC may add other software as required but documentation and report data shall be made available to FTA.

### **7.1 Reporting for Bus & Rail**

When the review applies to bus and rail vehicles, the PMOC shall provide FTA with a written report for each or any of the three reviews described above – pre-award, intermediate, post-delivery. The report is specifically meant to discuss and help resolve issues associated with traditional bus, rail, and other rolling stock audits.

### **7.2 Reporting for Systems Equipment, Other Manufactured Products, Iron and Steel**

For manufactured products or equipment specific to stand alone systems; the PMOC is also tasked with evaluating whether Buy America regulations are being adhered to by the Project Sponsor. Procurements that are not categorized solely as bus or rail typically do not undergo a pre-award, intermediate, and post-delivery review; however the overall responsibility to monitor and perform oversight activities should be no different.

## APPENDIX A

### Acceptable Quality Level

	DESIRED OUTCOME	PERFORMANCE REQUIREMENT	ACCEPTABLE QUALITY LEVEL	PERFORMANCE MEASURE	MONITORING METHOD	CHECK LIST
1	The PMOC shall review the status of Project Sponsor's Buy America compliance.	<b>R1a.</b> The PMOC shall develop and document a process for review and analysis of a Project Sponsor's Buy America requirements.	<b>Q1a.</b> Process exists and has been followed.	<b>M1a.</b> Evidence of a documented process.	<b>MM1a.</b> Periodic review by FTA or its agent.	
		<b>R1b.</b> The PMOC shall use its process and to validate the thoroughness of Buy America requirements at all phases of the Project.	<b>Q1b.</b> Assessment must be made and the PMOC provides internal verification that the process as documented has been followed.	<b>M1b.</b> Documented assessment of Buy America process and requirements.	<b>MM1b.</b> Periodic review by FTA or its agent.	
2	The PMOC shall, at appropriate phases of the Project, review Project Sponsor's compliance with Buy America, determine the existence of any discrepancies, report such discrepancies to FTA and concurrently work with Project Sponsor to secure correction of them.	<b>R2a.</b> The PMOC shall confirm through review of Project Sponsor submittals, contract provisions, audits and certifications that Buy America requirements have been met at pre-award, intermediate and post-delivery times.	<b>Q2a.</b> Professional opinion of Buy America compliance by Project Sponsor.	<b>M2a.</b> Documented evidence of a thorough review by PMOC for Buy America compliance at pre-award, intermediate and post-delivery, supported by a professional opinion.	<b>MM2a.</b> Periodic review by FTA or its agent.	
		<b>R2b.</b> The PMOC shall continually monitor the status of Project Sponsor's Buy America program, note discrepancies, discuss corrective action with Project Sponsor and report discrepancies together with intended corrective action to FTA.	<b>Q2b.</b> Professional opinion as it pertains to discrepancies in Project Sponsor's program together with intended corrective action.	<b>M2b.</b> Documented evidence of continued monitoring and review, discussion of discrepancies and reporting of intended corrective action, supported by a professional opinion.	<b>MM2b.</b> Periodic review by FTA or its agent.	
3	The PMOC shall document its findings, professional opinions, and recommendations in a report to the FTA.	<b>R3.</b> The PMOC shall present its findings, conclusions, and recommendations to FTA and, upon FTA approval, reconcile those recommendations with the Project Sponsor to the extent possible.	<b>Q3.</b> Reports and presentations are professional, clear, concise, and well written. The findings and conclusions have been reconciled with other PMOC reports and have been reconciled with Project Sponsor to the extent possible.	<b>M3.</b> PMOC's findings, conclusions, recommendations, and presentation.	<b>MM3b.</b> Periodic review by FTA or its agent.	



## APPENDIX B

### Sample Review Certifications (Bus and Rail)

---

The following review certifications required for Buy America compliance can be found at [http://www.fta.dot.gov/legislation\\_law/12921.html](http://www.fta.dot.gov/legislation_law/12921.html).

#### PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B, \_\_\_\_\_ (the recipient) is satisfied that the rail vehicles to be purchased, \_\_\_\_\_ (number and description of rail vehicles) from \_\_\_\_\_ (the manufacturer), meet the requirements of 49 USC 5323(j). The recipient, or its appointed analyst \_\_\_\_\_ (the analyst – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the rail vehicles identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the rail vehicles, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

#### Exhibit B-1. Sample Pre-Award Buy America Compliance Certification

#### PRE-AWARD BUY AMERICA EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B, \_\_\_\_\_ (the recipient) certifies that there is a letter from FTA that grants a waiver to the rail vehicles to be purchased, \_\_\_\_\_ (number and description of rail vehicles), from 49 USC 5323 (j). .

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

#### Exhibit B-2. Sample Pre-Award Buy America Exemption Certification

PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B, \_\_\_\_\_  
\_\_\_\_\_(the recipient) certifies that the rail vehicles to be purchased,  
\_\_\_\_\_(number and description of rail vehicles) from \_\_\_\_\_(the  
manufacturer), are the same product described in the recipient's solicitation specification and that the  
proposed manufacturer is a responsible manufacturer with the capability to produce a rail vehicle that  
meets the specifications.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Exhibit B-3. Sample Pre-Award Purchaser's Requirements Certification

POST-DELIVERY BUY AMERICA COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart C, \_\_\_\_\_  
\_\_\_\_\_(the recipient) certifies that it is satisfied that the rail vehicles received, (number  
and description of rail vehicles) from \_\_\_\_\_  
\_\_\_\_\_(the manufacturer), meet the requirements of 49 USC 5323 (j). The recipient, or its appointed  
analyst \_\_\_\_\_(the analyst – not the manufacturer or its agent), has  
reviewed documentation provided by the manufacturer, which lists (1) the actual component and  
subcomponent parts of the rail vehicles identified by the manufacturer, country of origin, and cost; and  
(2) the actual location of the final assembly point for the rail vehicles, including a description of the  
activities that took place at the final assembly point and the cost of final assembly.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Exhibit B-4. Sample Post-Delivery Buy America Compliance Certification

POST-DELIVERY BUY AMERICA EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart C, \_\_\_\_\_  
\_\_\_\_\_(the recipient) certifies that there is a letter from FTA, which grants a waiver  
to the rail vehicles received, \_\_\_\_\_  
\_\_\_\_\_(manufacturer, number  
and description of rail vehicles), from the Buy America requirements under 49 USC 5323 (j).

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Exhibit B-5. Sample Post-Delivery Buy America Exemption Certification

POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart C,  
\_\_\_\_\_  
\_\_\_\_\_(the recipient) certifies that a resident inspector,  
\_\_\_\_\_  
(the resident inspector – not an agent or employee of the manufacturer), was at  
\_\_\_\_\_  
(the manufacturer) manufacturing site during the period of manufacture of the rail vehicles,  
\_\_\_\_\_  
(number and description of rail vehicles). The inspector monitored manufacturing and completed a  
report on the manufacture of the rail vehicles providing accurate records of all vehicle construction  
activities. The report addresses how the construction and operation of the rail vehicles fulfill the contract  
specifications. After reviewing the report, visually inspecting the rail vehicles, the recipient certifies that  
the rail vehicles meet the contract specifications.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Exhibit B-6. Sample Post-Delivery Purchaser's Requirements Certification

## APPENDIX C

### Pre-Award, Intermediate, and Post-Delivery Review Checklists (Bus and Rail)

Item	Issue
<b>1.0</b>	<b>Specification</b>
1.1	Does the specification contain requirements that make it hard for the supplier to achieve Buy America requirements
1.2	Does the specification require the supplier to meet the Buy America Act and refer specifically to the relevant sections of Title 49, CFR, Sections 661 and 663
1.3	Does the specification call for Pre-Award and Post Delivery Audits for Buy America
1.4	Does the Project Sponsor's procurement documentation mandate or require an Intermediate Buy America Audit, and is the Audit planned at such a point that it will identify whether or not the procurement is on target but still allow time to take corrective action(s) if there is a risk of failing to comply?
<b>2.0</b>	<b>Pre Award Audit</b>
2.1	Is the Project Sponsor's auditor experienced in Buy America Audits?
2.2	Are there any major assemblies or sub-assemblies identified in the Pre-Award review with Domestic content close to or below 60%?
2.3	Are there significant sub-assemblies with content close to 60% that are claimed as 100% in the Major Assembly
2.4	Has the auditor drilled down into the list of vehicle components sufficiently to demonstrate that changes at lower levels will not cause any major sub-assemblies, claimed at 100%, to not comply?
2.5	Will the vehicle bodies be manufactured in the US, or will they arrive as "knock down" components from abroad, requiring minor assembly work?
2.6	What inspection services does the Project Sponsor propose?
<b>3.0</b>	<b>Intermediate Audit</b>
3.1	Has the Project Sponsor performed an Intermediate Audit?
3.2	Is the Project Sponsor's auditor experienced in Buy America Audits?
3.3	Are there major assemblies with Domestic content close to or below 60%?
3.4	Are there significant sub-assemblies with content close to 60% that are claimed as 100% in the Major Assembly?
3.5	Has the auditor drilled down sufficiently to demonstrate that changes at lower levels will not cause any major sub-assemblies, claimed at 100%, to not comply?
3.6	Are the vehicle bodies manufactured in the US, or do they arrive as "knock down" components from abroad, requiring minor assembly work?
3.7	Does the Project Sponsor have on-site inspection?
3.8	Does the Project Sponsor's inspection coverage include major sub-suppliers?
3.9	If the Project Sponsor did not perform an Intermediate Audit:
3.10	Have there been any substantive changes in sourcing since the Pre-Award audit
3.11	Do any of the changes impact Major Assemblies with close to or below 60% domestic content?

<b>4.0</b>	<b>Post Delivery Audit</b>
4.1	Is the Project Sponsor's auditor experienced in Buy America Audits?
4.2	Did the Project Sponsor obtain and retain Pre-Award Buy America certifications from successful suppliers for purchases of more than \$100,000?
4.3	Did the Project Sponsor conduct Pre-Award and Post-Delivery audits for its purchase of rolling stock over \$100,000? Does the Project Sponsor have properly completed certifications for each review in its contract files?
4.4	If the Project Sponsor is purchasing rolling stock with multiple delivery dates, using options, or multi-year procurements, and, if so, has the Project Sponsor/Sponsor performed and certified Pre-Award and Post-Award audit for each group of vehicles, before placing them into revenue service?
4.5	Has the Project Sponsor requested and/or received a waiver for any part of its purchase of vehicles? Does the Project Sponsor have the FTA approved waiver in its procurement files for PMOC review?
4.6	Are there major assemblies with Domestic content close to or below 60%?
4.7	Are there significant sub-assemblies with content close to 60% that are claimed as 100% in the Major Assembly?
4.8	Has the auditor drilled down sufficiently to demonstrate that changes at lower levels will not cause any major sub-assemblies, claimed at 100%, to not comply?
4.9	Were the vehicle bodies manufactured in US, or did they arrive as "knock down" components from abroad, requiring minor assembly work?
4.10	Does Project Sponsor have on-site inspection planned and implemented throughout manufacturing, assembly and testing; and provided such reports?