



August 17, 2015

U.S. Department of Transportation
1200 New Jersey Avenue S.E., West Building
Ground Floor, Room W12-140
Washington, DC 20590-0001

RE: Docket No. FTA-2015-0020

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Transit Administration (FTA) request for comments on Buy America Handbook; Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements, published on June 16, 2015 at 80 FR 34487.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

General Comments

We commend FTA on its efforts to work with industry in drafting this proposed handbook. That collaboration has contributed to a solid, practical draft. Our comments are intended to build on that collaboration and assist FTA in completing and fielding the best possible handbook with minimal delay.

While we discuss a number of significant issues in these comments, we also urge FTA to carefully review the voluminous comments of APTA member Buy America practitioners, including auditors and transit agencies. These comments offer insights into discrete issues and highlight industry practices that have evolved to fill in gaps in regulatory language.

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The sample Buy America content worksheet at Appendix A suggests a rail car or bus includes far more components than 49 CFR 661.11. We believe the example should be pared to match the regulatory provision to avoid inadvertently expanding the universe of what is to be considered components and altering the calculations for all vehicles.

The concept of “delivery period” in section 5 is not well defined. Deliveries under a typical procurement may be continuous over a period of years – essentially a long, single delivery period. FTA should address this to avoid the misperception that multiple audits are required for a single, albeit large, order.

Paragraphs 2.2.2 and 3.1.2 suggest that grantees should maintain voluminous documentation that would be duplicative of documentation already required to be maintained by suppliers. This would go far beyond the regulatory requirement to review such documentation and create an undue burden on grantees and their suppliers.

The worksheets incorrectly suggest Original Equipment Manufacturers’ manufacturing costs and profit are to be considered within a Buy America calculation. See page 100. They should be amended to delete this information. Similarly, section 4.4.1 should be amended to delete references to profit or margins. Profit or loss is not germane to a Buy America calculation. Likewise, final assembly costs should not be included in these calculations. In short, the total contract value is immaterial.

There should, however, be an explicit acknowledgement that when an OEM manufactures a component, related profit, overhead, labor, and administrative costs are legitimate aspects of the domestic content value of that component, just as it would be if the component were manufactured by an outside supplier.

The draft should clarify that there is no requirement to obtain certification from suppliers where the components or subcomponents supplied are treated as foreign by the Original Equipment Manufacturer. Once an audit has established that the 60% threshold has been reached, compliance is complete and the audit process should be concluded. Requiring further accounting once the 60% threshold has been met is expensive, time consuming, and not required by statute.

Additionally, FTA should revisit language that references ‘categories of materials.’ Reference to a category (e.g., wiring) is far different to reference to the many components likely to contain materials from that category. Gathering materials into categories rather than within the framework of components and subcomponents skews the calculations.

The worksheets do not adequately address situations where original equipment manufacturers manufacture components in-house. Additionally, it would be helpful to incorporate the concept of change orders that materially affect Buy America calculations.

FTA should consider drafting a discussion of approaches to auditing multi-recipient, multi-year procurements. As with this draft, it should be posted for notice and comment prior to publication. Similarly, FTA should address the re-use of accessory subcomponents from existing vehicles. Given Congressional consideration of increasing required US content and changing the character of US steel subjected to manufacturing processes outside the US, an update may be required in the near term and that update would provide an opportunity to vet these drafts.

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FTA should clarify the status of overhauls and rebuilds, affirming that 49 CFR 661.11 is applicable to both.

While we recognize the certifications on pages 117 and 137 are drawn directly from Part 661, we suggest FTA consider harmonizing the language of those certifications in a future rulemaking. Moreover, that future rulemaking should include definition of what qualifies an auditor.

Finally, we suggest FTA release any documentation of lessons learned during its work on this draft as it would be helpful to practitioners throughout the industry, and to post a Word copy of the draft to its web site to facilitate language suggestions from the industry.

We appreciate the opportunity to assist FTA in this important endeavor. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael P. Melaniphy", written in a cursive style.

Michael P. Melaniphy
President & CEO

MPM/jpl:jr