

# Lessons Learned from FTA Buy America Compliance Reviews



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of Transportation  
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# Agenda

- Requirements
- Buy America Compliance Reviews
- Key Lessons Learned
- Next Steps

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# Statutory Requirement:

- 49 U.S.C. §5323(j)(1): “The Secretary may obligate an amount to be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.”
- 49 U.S.C. §5323(j)(2)(C): “. . . when procuring rolling stock (including train control, communication, and traction power equipment) under this chapter—(i) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the rolling stock; and (ii) final assembly of the rolling stock has occurred in the United States.”

# Pre-award and Post-delivery Audits of Rolling Stock

- Statutory Requirement: 49 U.S.C. §5323(m)
- Implementing Regulations: 49 C.F.R. part 663
- FTA requires its grantees and other recipients to conduct audits at the pre-award and post-delivery stages for rolling stock procurements.

# Buy America Compliance Reviews

- Purpose: Ensure that FTA's grant recipients are doing due diligence in verifying that their suppliers are in full compliance with the Buy America law.

# Buy America Compliance Reviews

- Desk reviews of pre-award and post-delivery audit reports
- On-site reviews at component manufacturing and final assembly locations.
- Fourteen Reviews of:
  - Rail and Bus Vehicle Procurements
  - Maintenance Facility
  - Transit Stations
  - Traction Power and Signal Systems

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Grantee	Procurement	Manufacturer
NJ Transit	Commuter Rail cabs and coaches	Bombardier
WMATA (Part 1)	Heavy Rail Vehicles	Kawasaki
Houston METRO	Light Rail Vehicles	Siemens
San Antonio VIA	Hybrid buses	New Flyer
San Bernardino – Omnitrans	Articulated CNG buses	New Flyer
MBTA	Commuter Rail Coaches	Hyundai Rotem
Philadelphia Center City District	Dilworth Plaza - structural glass	Daniel J. Keating
WMATA (Part 2)	Heavy Rail Vehicles (final assembly)	Kawasaki
South Carolina DOT (for the City of Seneca, SC)	Electric Buses	Proterra
NTCOG (DART)	Streetcars	Brookville Equipment
Denver RTD	Traction Power and Signal System	Denver Transit Partners, LLC
City of Tucson	Maintenance Facility	D. L. Withers Construction
BART	Cable Car - Oakland Airport Connector	Flatiron/Parsons Joint Venture (Doppelmayr)
Sound Transit	University Link Stations (escalators)	Turner and Hoffman

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# Pre-Award Desk Reviews

- A review and evaluation of the reliability of the grantee's pre-award audit.
- Identified any components in the pre-award Buy America audit that were at risk of being under the 60% domestic content requirement.
- Identified any concerns regarding the accuracy of claims for final assembly.



# Pre-Award Desk Review Results

Some grantees did not:

- Request the manufacturer to provide a breakdown of 100% of the sub-components and components, identifying country of origin and noting the domestic and foreign content.
- Perform an independent evaluation of the vehicle manufacturer's Buy America compliance matrix audit report.
- Request and review component supplier Buy America certificates that attested that each supplier would comply with Buy America requirements.
- Identify the final assembly activities the vehicle manufacturer would perform and compare them against the minimum required per 49 C.F.R. Part 661.
- Identify the final assembly location or the cost of final assembly per vehicle.
- Include the executed Purchaser's Requirement certification in the pre-award audit report.
- Provide documentation of the process undertaken to verify technical specification compliance to the proposed vehicle.
- Provide supporting documentation of the process to verify the manufacturer's capability and responsibility.

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# On-Site Reviews

- To compare the actual manufacturer-of-origin from the Bill of Material, along with actual costs, against those identified and estimated in the pre-award documentation.
- To verify that the components and sub-components incorporated at final assembly were the same as those identified in the pre-award audit desk review and other field reviews.
- To check that the actual final assembly met the Buy America final assembly requirements.

# On-Site Review Results

- Assisted with clarifying subcomponent identification, manufacturing locations and cost breakdowns.
- Assisted the FTA in understanding and confirming component manufacturing activities.
- In general, components thought to be at risk of falling below the 60% domestic content threshold were shown to have met or exceeded their grantee reported Buy America domestic content percentages.

# Post-Delivery Audit Desk Reviews

- Whether the manufacturer had accurately calculated domestic and foreign content.
- Whether the components and subcomponents incorporated into the final product matched the components and subcomponents listed in the post-delivery audit report.

# Post-Delivery Desk Reviews Results

- Uncertainty over the timing requirements for the post-delivery audit compared to the timing for revenue service for the production vehicles.



# Key Lessons Learned

- Documentation
- Definitions
- Buy America vs. Buy American

# Key Lessons - Documentation

- Varying levels of documentation to support Buy America compliance.
  - Some grantees required more documentation than others
  - Contractors required different types of documentation from their subcontractors
- Guidance should better identify what constitutes proper and sufficient support documentation to support certification of Buy America compliance and/or a grantee's pre-award/post-delivery audit

# Key Lessons - Definitions

- In both rolling stock and non-rolling stock procurements, a common theme during FTA's reviews was the misunderstanding and misapplication of FTA's Buy America definitions for "end products," "systems," "components," and "subcomponents."
- Improved guidance would assist determinations of subcomponents and components and how the various designations should be incorporated into the domestic content calculations for rolling stock.

# Key Lessons – Buy America/can

- A common point of confusion, especially on non-rolling stock procurements (e.g. facilities), was that contractors and subcontractors, particularly those new to FTA-funded projects, certified compliance with “Buy American” instead of FTA’s specific Buy America requirements.

# Next Steps

- FTA is updating its Pre-Award and Post-Delivery Audit Handbook
- Major Revisions will include:
  - 1 handbook: Rail and Bus
  - Guidance for manufacturers and suppliers as well
    - Best Practices
    - Clarifications
    - Expectations for documentation
      - Sample Audit Reports
      - Sample Certifications
      - Checklists



# Questions?



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