

- (14) Low voltage facility distribution switch board
- (15) DC connect switches
- (16) Negative bus boxes
- (17) Power rail insulators
- (18) Power cables (AC and DC)
- (19) Cable trays
- (20) Instrumentation for traction power equipment
- (21) Connectors, tensioners, and insulators for overhead power wire systems
- (22) Negative drainage boards
- (23) Inverters
- (24) Traction motors
- (25) Propulsion gear boxes
- (26) Third rail pick-up equipment
- (27) Pantographs

(w) The power or third rail is not considered traction power equipment and is thus subject to the requirements of 49 U.S.C. 5323(j) and the requirements of § 661.5.

(x) A bidder on a contract for an item covered by 49 U.S.C. 5323(j) who will comply with section 165(b)(3) and regulations in this section is not required to follow the application for waiver procedures set out in § 661.9. In lieu of these procedures, the bidder must submit the appropriate certificate required by § 661.12.

APPENDIX A TO § 661.11—GENERAL WAIVERS

(a) The provisions of § 661.11 of this part do not apply when foreign sourced spare parts for buses and other rolling stock (including train control, communication, and traction power equipment) whose total cost is 10 percent or less of the overall project contract cost are being procured as part of the same contract for the major capital item.

(b) [Reserved]

APPENDIX B TO § 661.11—TYPICAL COMPONENTS OF BUSES

The following is a list of items that typically would be considered components of a bus. This list is not all-inclusive.

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, inte-

rior 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.

APPENDIX C TO § 661.11—TYPICAL COMPONENTS OF RAIL ROLLING STOCK

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, 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, couplers and draft gear, trucks, journal bearings, axles, diagnostic equipment, and third rail pick-up equipment.

[61 FR 6302, Feb. 16, 1996, as amended at 62 FR 40954, July 31, 1997]

**§ 661.12 Certification requirement for procurement of buses, other rolling stock and associated equipment.**

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in § 661.13(b) of this part.

*Certificate of Compliance With Section 165(b)(3)*

The bidder hereby certifies that it will comply with the requirements of section 165(b)(3), of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 661.11.

Date \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Title \_\_\_\_\_

*Certificate for Non-Compliance with Section 165(b)(3)*

The bidder hereby certifies that it cannot comply with the requirements of section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirement consistent with section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR 661.7.

Date \_\_\_\_\_

**§ 661.13**

Signature \_\_\_\_\_  
Company Name \_\_\_\_\_  
Title \_\_\_\_\_

**§ 661.13 Grantee responsibility.**

(a) The grantee shall adhere to the Buy America clause set forth in its grant contract with FTA.

(b) The grantee shall include in its bid specification for procurement within the scope of these regulations an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with § 661.6 or § 661.12 of this part, as appropriate.

(c) Whether or not a bidder or offeror certifies that it will comply with the applicable requirement, such bidder or offeror is bound by its original certification and is not permitted to change its certification after bid opening. A bidder or offeror that certifies that it will comply with the applicable Buy America requirements is not eligible for a waiver of those requirements.

**§ 661.15 Investigation procedures.**

(a) It is presumed that a bidder who has submitted the required Buy America certificate is complying with the Buy America provision. A false certification is a criminal act in violation of 18 U.S.C. 1001.

(b) Any party may petition FTA to investigate the compliance of a successful bidder with the bidder's certification. That party ("the petitioner") must include in the petition a statement of the grounds of the petition and any supporting documentation. If FTA determines that the information presented in the petition indicates that the presumption in paragraph (a) of this section has been overcome, FTA will initiate an investigation.

(c) In appropriate circumstances, FTA may determine on its own to initiate an investigation without receiving a petition from a third party.

(d) When FTA determines under paragraph (b) or (c) of this section to conduct an investigation, it requests that the grantee require the successful bidder to document its compliance with its Buy America certificate. The successful bidder has the burden of proof

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to establish that it is in compliance. Documentation of compliance is based on the specific circumstances of each investigation, and FTA will specify the documentation required in each case.

(e) The grantee shall reply to the request under paragraph (d) of this section within 15 working days of the request. The investigated party may correspond directly with FTA during the course of investigation, if it informs the grantee that it intends to do so, and if the grantee agrees to such action in writing. The grantee must inform FTA, in writing, that the investigated party will respond directly to FTA. An investigated party may provide confidential or proprietary information (see paragraph (1) of this section) directly to FTA while providing other information required to be submitted as part of the investigation through the grantee.

(f) Any additional information requested or required by FTA must be submitted within 5 working days after the receipt of such request unless specifically exempted by FTA.

(g) The grantee's reply (or that of the bidder) will be transmitted to the petitioner. The petitioner may submit comments on the reply to FTA within 10 working days after receipt of the reply. The grantee and the low bidder will be furnished with a copy of the petitioner's comments, and their comments must be received by FTA within 5 working days after receipt of the petitioner's comments.

(h) The failure of a party to comply with the time limits stated in this section may result in resolution of the investigation without consideration of untimely filed comments.

(i) During the course of an investigation, with appropriate notification to affected parties, FTA may conduct site visits of manufacturing facilities and final assembly locations as it considers appropriate.

(j) FTA will, upon request, make available to any interested party information bearing on the substance of the investigation which has been submitted by the petitioner, interested parties or grantees, except to the extent that withholding of information is permitted or required by law or regulation.