

(k) If a party submitting information considers that the information submitted contains proprietary material which should be withheld, a statement advising FTA of this fact may be included, and the alleged proprietary information must be identified wherever it appears. Any comments on the information provided shall be submitted within a maximum of ten days.

(l) For purposes of paragraph (j) of this section, confidential or proprietary material is any material or data whose disclosure could reasonably be expected to cause substantial competitive harm to the party claiming that the material is confidential or proprietary.

(m) When a petition for investigation has been filed before award, the grantee will not make an award before the resolution of the investigation, unless the grantee determines that:

(1) The items to be procured are urgently required;

(2) Delivery of performance will be unduly delayed by failure to make the award promptly; or

(3) Failure to make prompt award will otherwise cause undue harm to the grantee or the Federal Government.

(n) In the event that the grantee determines that the award is to be made during the pendency of an investigation, the grantee will notify FTA before making such award. FTA reserves the right not to participate in the funding of any contract awarded during the pendency of an investigation.

(o) Initial decisions by FTA will be in written form. Reconsideration of an initial decision of FTA may be requested by any party involved in an investigation. FTA will only reconsider a decision only if the party requesting reconsideration submits new matters of fact or points of law that were not known or available to the party during the investigation. A request for reconsideration of a decision of FTA shall be filed not later than ten (10) working days after the initial written decision. A request for reconsideration will be subject to the procedures in this section consistent with the need for prompt resolution of the matter.

§ 661.17 Failure to comply with certification.

If a successful bidder fails to demonstrate that it is in compliance with its certification, it will be required to take the necessary steps in order to achieve compliance. If a bidder takes these necessary steps, it will not be allowed to change its original bid price. If a bidder does not take the necessary steps, it will not be awarded the contract if the contract has not yet been awarded, and it is in breach of contract if a contract has been awarded.

§ 661.18 Intentional violations.

A person shall be ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 pursuant to part 29 of this title if it has been determined by a court or Federal agency that the person intentionally—

(a) Affixed a label bearing a “Made in America” inscription, or an inscription with the same meaning, to a product not made in the United States, but sold in or shipped to the United States and used in projects to which this section applies, or

(b) Otherwise represented that any such product was produced in the United States.

[61 FR 6303, Feb. 16, 1996]

§ 661.19 Sanctions.

A willful refusal to comply with a certification by a successful bidder may lead to the initiation of debarment or suspension proceedings under part 29 of this title.

§ 661.20 Rights of third parties.

The sole right of any third party under the Buy America provision is to petition FTA under the provisions of § 661.15 of this part. No third party has any additional right, at law or equity, for any remedy including, but not limited to, injunctions, damages, or cancellation of the Federal grant or contracts of the grantee.

§ 661.21 State Buy America provisions.

(a) Except as provided in paragraph (b) of this section, any State may impose more stringent Buy America or

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buy national requirements than contained in section 165 of the Act and the regulations in this part.

SOURCE: 56 FR 48395, Sept. 24, 1991, unless otherwise noted.

(b) FTA will not participate in contracts governed by the following:

Subpart A—General

(1) State Buy America or Buy National preference provisions which are not as strict as the Federal requirements.

§ 663.1 Purpose.

This part implements section 12(j) of the Federal Mass Transit Act of 1964, as amended, which was added by section 319 of the 1987 Surface Transportation and Uniform Relocation Assistance Act (Pub. L. 100-17). Section 12(j) requires the Federal Transit Administration, by delegation from the Secretary of Transportation, to issue regulations requiring pre-award and post-delivery audits when a recipient of Federal financial assistance purchases rolling stock with funds made available under the Federal Mass Transit Act, as amended.

(2) State and local Buy National or Buy America preference provisions which are not explicitly set out under State law. For example, administrative interpretations of non-specific State legislation will not control.

(3) State and local Buy Local preference provisions.

PART 663—PRE-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

Subpart A—General

- Sec.
- 663.1 Purpose.
- 663.3 Scope.
- 663.5 Definitions.
- 663.7 Certification of compliance to FTA.
- 663.9 Audit limitations.
- 663.11 Audit financing.
- 663.13 Buy America requirements.
- 663.15 Compliance.

§ 663.3 Scope.

This part applies to a recipient purchasing rolling stock to carry passengers in revenue service with funds made available under sections 3, 9, 18, and 16(b)(2) of the Federal Mass Transit Act, as amended; 23 U.S.C. 103(e)(4); and section 14 of the National Capital Transportation Act of 1969, as amended.

Subpart B—Pre-Award Audits

- 663.21 Pre-award audit requirements.
- 663.23 Description of pre-award audit.
- 663.25 Pre-award Buy America certification.
- 663.27 Pre-award purchaser's requirements certification.

§ 663.5 Definitions.

As used in this part—

(a) *Pre-award* means that period in the procurement process before the recipient enters into a formal contract with the supplier.

Subpart C—Post-Delivery Audits

- 663.31 Post-delivery audit requirements.
- 663.33 Description of post-delivery audit.
- 663.35 Post-delivery Buy America certification.
- 663.37 Post-delivery purchaser's requirements certification.
- 663.39 Post-delivery audit review.

(b) *Post-delivery* means the time period in the procurement process from when the rolling stock is delivered to the recipient until title to the rolling stock is transferred to the recipient or the rolling stock is put into revenue service, whichever is first.

Subpart D—Certification of Compliance With or Inapplicability of Federal Motor Vehicle Safety Standards

- 663.41 Certification of compliance with Federal motor vehicle safety standards.
- 663.43 Certification that Federal motor vehicle standards do not apply.

(c) *Recipient* means a recipient of Federal financial assistance from FTA.

(d) *Revenue service* means operation of rolling stock for transportation of fare-paying passengers as anticipated by the recipient.

(e) *Rolling stock* means buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, and vehicles used for guideways and incline planes.

AUTHORITY: 49 U.S.C. 1608(j); 23 U.S.C. 103(e)(4); Pub. L. 96-184, 93 Stat. 1320; Pub. L. 101-551, 104 Stat. 2733; 49 CFR 1.51.

(f) *Audit* means a review resulting in a report containing the necessary certifications of compliance with Buy