



REQUEST FOR PROPOSALS

to provide

BUY AMERICA PRE-AWARD, POST-DELIVERY AUDITS AND VEHICLE INSPECTION SERVICES RFP No. 25-R25

Dear Proposers:

The Napa Valley Transportation Authority (NVTA) is issuing a Request for Proposals (RFP) for BUY AMERICA PRE-AWARD, POST-DELIVERY AUDITS AND VEHICLE INSPECTION SERVICES. This project will be funded using Federal and State funds for a term of three (3) years with two (2) one-year options. NVTA invites all qualified entities or individuals that possess the qualifications, experience, and knowledge to submit a proposal.

Any contract to be awarded as a result of this RFP will be awarded without discrimination based on race, color, religion, sex, sexual orientation, race, religious creed, color, national origin, ancestry, denial of family and medical care leave, medical condition (cancer/genetic characteristics) physical handicap, disability (mental or physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation, marital status, age (40 and above).

To obtain a full copy of the RFP, please contact NVTA office at (707) 259-8790 or download the document in PDF format from our [NVTA website](#). All inquiries pertaining to this RFP should be emailed to Renel Coombs, Procurement & Contracts Administrator, at the following email address: rcoombs@nvta.ca.gov. Response to all questions submitted will be answered in accordance with the Procurement Schedule of this RFP.

Proposals must be received no later than APRIL 25, 2025, no later than 5:00 PM (PST/local).

Late proposals may not be considered.

Proposals will be accepted by means of electronic mail (email) addressed as follows:

Kate Miller
Executive Director
Napa Valley Transportation Authority
625 Burnell Street.
Napa, CA 94559

RFP No. 25-R25

Proposals shall be submitted by means of electronic mail to rcoombs@nvta.ca.gov with the subject titled: "Proposal for RFP No. 25-R25"

We look forward to receiving your proposal.

Sincerely,

Kate Miller
Executive Director

03/26/2025



REQUEST FOR PROPOSALS

to provide

BUY AMERICA PRE-AWARD, POST-DELIVERY AUDITS AND VEHICLE INSPECTION SERVICES

RFP No. 25-R25

Issued by:

Napa Valley Transportation Authority

on MARCH 27, 2025

**RESPONSES DUE:
5:00 PM(PST/Local), APRIL 25, 2025**

at the

Napa Valley Transportation Authority
625 Burnell Street
Napa, CA 94559

Release of RFP authorized by:

Kate Miller, Executive Director

Date

REQUEST FOR PROPOSALS
BUY AMERICA PRE-AWARD, POST-DELIVERY AUDITS AND VEHICLE
INSPECTION SERVICES
RFP No. 25-R25

PROCUREMENT SCHEDULE

Issue Date	MARCH 27, 2025
Pre-Proposal Conference (Virtual)	APRIL 03, 2025 AT 10:00 AM (PST)
Deadline for Submitting Written Questions	APRIL 09, 2025 AT 5:00 PM (PST)
Answers to Written Questions Posted	APRIL 11, 2025
Deadline for Proposal Submittal	APRIL 25, 2025 at 5:00 PM (PST)
Estimated Award Date	MAY 12, 2025

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Buy America Pre-Award/Post-Delivery Audit & Vehicle Inspection Services

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SECTION I - INTRODUCTION

The Napa Valley Transportation Authority (NVTA) is a joint powers authority established in June of 1998 with members including the cities of American Canyon, Calistoga, Napa, St. Helena, the Town of Yountville, and the County of Napa. The work activities of NVTA are defined by the joint powers agreement and overseen by the Board of Directors made up of elected officials from the respective member agencies, and an ex-officio member from the Paratransit Coordinating Council (PCC).

NVTA serves as the countywide transportation planning body for the incorporated and unincorporated areas within Napa County and is responsible for programming State and Federal funding for transportation projects within the county. NVTA is charged with coordinating short- and long-term planning and funding within an intermodal policy framework in the areas of highways, streets and roads, transit and paratransit, and bicycle improvements.

NVTA also operates the Napa Vine transit services. Napa Vine provides inter- county/city transit services between Napa Valley Cities, towns and the Counties of Sonoma, Solano, and Contra Costa. Napa Vine Go is the companion paratransit service for Napa County's residents. In addition, the Vine suite of services includes American Canyon Transit, St. Helena Transit, the Yountville Bee-Line, City of Napa On-Demand service, and the Calistoga Shuttle. The fleet consists of 75 vehicles and provides roughly 1,000,000 trips per year prior to COVID (in Fiscal Year 2018-2019) and over 300,000 trips during COVID (in Fiscal Year 2020-2021).

The Napa Valley Transportation Authority (NVTA) is also the local transportation sales tax authority. NVTA is responsible for the oversight and administration of Measure T, the ½% sales tax for street and road improvements approved by the voters on November 6, 2012. Measure T was supplanted by Measure U in 2024.

Background on Measure U

On June 20, 2024, the NVTA-TA Board of Directors unanimously placed Measure U—the Napa Valley Transportation Improvement Act—on the November 5 ballot. Measure U continues funding for local streets, road maintenance, and transportation improvements throughout the County through a 1/2 cent sales tax for 30 years starting July 1, 2025.

Voters approved the measure with 72.8% support, meeting the threshold for passage. Certified by the Napa County Registrar of Voters on December 3, 2024, Measure U will begin revenue collection on July 1, 2025. Measure U is expected to generate sales tax revenues of \$1.2 billion over 30 years and allows for bonding capacity.

Measure U improves upon the current Measure T sales tax by funding highway and emergency evacuation projects in addition to continuing funding for road maintenance and rehabilitation.

SECTION II - INSTRUCTIONS TO PROPOSERS

A. Pre-proposal Conference

A virtual pre-proposal conference will be held on **April 03, 2025**, at **10:00 AM (PST/local)** via **Zoom**. *Proposers are advised to register with Renel Coombs, Procurement & Contracts Administrator at <mailto:rcoombs@nvta.ca.gov> in advance to be notified of any changes made to the meeting dates or times.*

You are invited to a Zoom meeting.

*When: **April 3, 2025; 10:00 AM Pacific Time (US and Canada)***

Join Zoom Meeting

NVTA MAIN is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://countyofnapa.zoom.us/j/81146229073?pwd=F4Cpw9lvKB7s2DAVpffbkl1zZa8yVH.1>

Meeting ID: 811 4622 9073

Passcode: 780448

Attendance is not mandatory but highly encouraged to submit a proposal.

B. Examination of Proposal Documents

By submitting a proposal, the Proposer represents that it has thoroughly examined and become familiar with the work required and that Proposer can perform the work identified in the Scope of Work (SOW), Section IV, of this RFP.

C. Addenda/Clarifications

Explanations or clarifications desired by respondents regarding the meaning or interpretation of the RFP may be requested verbally, at the pre-proposal meeting and must be followed up in writing in advance of the deadline for submission of questions. While this meeting is not mandatory, all Proposers intending to propose are strongly encouraged to attend. ***All inquiries pertaining to this RFP shall be emailed*** to Renel Coombs, Procurement and Contracts Administrator, at the following email address: rcoombs@nvta.ca.gov ***no later than 5:00 PM (PST/local) on April 09, 2025.*** A response to all questions will be submitted no later than April 11, 2025. Clarifications that may have a material impact on the proposal will be provided to all registered attendees of the pre-proposal conference and will also be posted on the [NVTA website](#), as an addenda to the RFP. Questions submitted in writing must include Questions for: RFP No. 25-R25 "Buy America Pre-Award/Post-Delivery Audit & Vehicle Inspection Services", in the subject line of the email or letter.

D. Proposal Submission

All proposal submittals shall be transmitted with a cover letter. The person authorized by the Proposer/Company to negotiate a contract with NVTa shall sign the cover letter and the letter shall include the name, title, address, email address and the telephone number of the individual to whom correspondence and other communications should be directed to during the proposer selection process. Address the cover letter as follows:

Kate Miller
Executive Director
Napa Valley Transportation Authority
625 Burnell Street
Napa, CA 94559

RFP No. 25-R25

The Proposer must submit one (1) electronic proposal in PDF format via electronic mail (email). If the proposal is too large to attach to the email, please provide a file transfer link in your email submission. **The proposal shall be emailed to Renel Coombs, Procurement & Contracts Administrator no later than 5:00 PM (PST/local), April 25, 2025.** Proposals shall only be submitted by email to Renel Coombs Procurement and Contracts Administrator: rcoombs@nvta.ca.gov, with the subject line titled Proposal for RFP No. 25-R25 Buy America Pre-Award/Post-Delivery Audit & Vehicle Inspection Services. Unless the deadline for submission of proposals has been extended by addenda, all proposals received after the time and date specified above will be considered nonresponsive and returned to Proposer unopened.

E. Protest

A Proposer may object to a provision of the RFP on the grounds that it is biased, unduly restrictive or arbitrary or to the selection of a particular proposer on the grounds that NVTa procedures, the provisions of the RFP or applicable provisions of Federal, State, or local law have been violated or inaccurately or inappropriately applied by submitting to the Procurement Officer, addressed to NVTa's Executive Director, a written explanation of the basis for the protest IAW [NVTa's Chapter 5: Contracting and Procurement](#) (E)(17):

1. Any protest based on such grounds not timely filed will not be considered by NVTa.
2. All documents submitted as part of the proposal will be deemed confidential during the evaluation process. After the award of a contract, any material submitted by a proposer in response to this RFP is subject to public inspection under the California Public Records Act ([Government Code Sections 6250 et seq.](#)) unless exempt by law. The proposer must

identify in writing all copyrighted material, trade secrets, or other proprietary information that it claims is exempt from disclosure.

F. Withdrawal of Proposal Submittal

A Proposer may withdraw its proposal at any time before the deadline of the time for submission of proposal submittals in Section II, D. of this RFP, by delivering to the Procurement Officer a written request for withdrawal signed by, or on behalf of, the Proposer.

G. Rights of NVTA

This RFP does not commit NVTA to enter into a contract, nor does it obligate NVTA to pay for any costs incurred in preparation and submission of the proposal or in anticipation of a contract.

NVTA may investigate the qualifications of any proposer under consideration, require confirmation of information furnished by the proposer, and require additional evidence or qualifications to perform the services described in the SOW, Section IV, of this RFP.

NVTA, in its sole discretion, reserves the right to:

1. Reject any or all proposal submittals.
2. Issue one (1) or more subsequent RFPs.
3. Postpone opening for its own convenience.
4. Remedy technical errors in the RFP process.
5. Approve or disapprove the use of sub-proposers.
6. Negotiate with any, all, or none of the proposers responding to this RFP.
7. Award a contract to one or more proposers.
8. Waive informalities and irregularities in any proposal.

H. Contract Type

NVTA intends to negotiate with Proposer a professional services agreement with a not-to-exceed amount.

I. Exceptions

Proposers shall be prepared to accept the terms and conditions of NVTA's Sample Professional Services Contract, ATTACHMENT C, of this RFP. If a proposer desires to take an exception(s) to the Agreement, the Proposer shall provide the following information as a section of the proposal identified as "Exception(s) to the Agreement":

1. Proposer shall clearly identify each proposed change to the Agreement, including all relevant Exhibits and Attachments.

2. Proposer shall furnish the reasons as well as specific recommendations for alternative language.

The above factors will be considered during contract negotiations. Substantial exceptions to the Agreement may be determined by NVTA, at its sole discretion, to be unacceptable and NVTA will proceed with negotiations with the next highest-ranking Proposer.

SECTION III - FORMAT AND CONTENT OF PROPOSAL

Instructions to Proposers

A. Technical Proposal

The Technical Proposal shall not exceed a total of the equivalent of twenty (20) single sided pages (10 double-side print pages). RFP submittals must consist of letter-sized (8.5" x 11") pages, and no more than three (3) tabloid-sized (11" x 17") pages. Each tabloid-size page is considered one page for the total page count. Required Forms under ATTACHMENT A, of this RFP, are excluded from the total page count. Résumés are also excluded from the total page count and shall be limited to two (2) letter-sized single-sided pages (or one (1) double-side print) per key staff member assigned to the project. Font size shall be at least 12-point in a font clearly readable to reviewers. The nature and form of response of the Technical Proposal submittal is at the discretion of those responding, but shall include, at a minimum, the information listed in Section III, B. Format, of this RFP.

B. Cost Proposal

The cost proposal cover summary sheet is added as separate document to the RFP on NVTA's website. Proposers must provide a cost proposal for the tasks in the SOW and provide a separate Rate/Fee Schedule, if any.

C. Format

Proposals shall be 1) as brief as possible and 2) not include any irrelevant promotional material. One (1) copy of the Technical and Cost Proposal must be submitted, electronically, in PDF format, to Renel Coombs, Procurement and Contracts Administrator: rcoombs@nvta.ca.gov.

D. Proposal Submittal

Proposal content, clarity, and completeness are factors which will be considered in evaluating each proposal received when determining suitability of each proposer's capabilities. The entire length of the proposal document must be 20-pages or less and shall include:

1. Title Page

2. Transmittal Letter
3. Executive Summary
4. Background and Experience
5. Qualifications
6. Past Performance
7. Staffing and Organization
8. Exception(s) to the Agreement
9. Appendices

1. TITLE PAGE

The title page should show the RFP title, the company name, local address, phone number and email of the primary contact person and the date of proposal.

2. TRANSMITTAL LETTER

A transmittal letter signed by an official authorized to contractually bind the proposer is required.

For this contract, NVTA does require Proposer to certify that:

1. By signature of this Transmittal Letter, Proposer does certify Proposer and proposed subcontractor's performing the Buy America Pre-Award and Post-Award audits will be independent from the manufacturer and the manufacture's agents throughout the term of the contract.
2. By signature of this Transmittal Letter, Proposer understands the criteria to self-certify as being independent from the manufacturer and agents is a **pass/fail requirement** with regards to this RFP.

The transmittal letter shall state that the ***proposal shall be valid for a 90-day period*** and should include the name, title, address, telephone number and email address of the individual to whom correspondence and other contacts should be directed during the proposer selection process.

Address the cover letter as follows:

Kate Miller
Executive Director
Napa County Transportation and Planning Agency
625 Burnell Street
Napa, CA 94559

RFP No. 25-R25

3. EXECUTIVE SUMMARY

This section should be limited to a brief narrative highlighting and

summarizing the proposal. Provide a brief description of resources and depth of staff in the office from which services will be provided. The summary should convey the Proposer has the resources and commitment to complete all components of every project in a timely manner.

4. PROPOSER BACKGROUND AND EXPERIENCE

General Information about the company:

- i. Company name and ownership structure.
- ii. History of Proposer, location(s) and size of company.
- iii. Any education obtained on Federal regulatory requirements, particularly in Federal Transit, conducting Buy America Audits and/or Vehicle Inspections.
- iv. Summarize experience working with Government transportation entities performing Buy America Audits and Vehicle Inspections.

5. QUALIFICATIONS OF PROPOSER

The Proposer who is awarded the contract for this work will be required to comply with all applicable Federal, State, Regional and local requirements.

Proposer shall provide at least three (3) references within the past five (5) years, that would be able to speak to their experience with the proposed primary service provider(s) in the role of audit and vehicle inspection services for a government public agency. Preferably, references should have been from a relevant transportation agency. Reference must include the name of the contact person, agency for whom the work was performed, telephone and email and the year in which the work was completed.

References may be contacted.

In addition, the selected proposer will be required to provide the certification of eligibility that the Proposer and /or any of its sub-consultants have not been debarred or suspended from providing services paid for by the Federal Government prior to award.

6. PAST PERFORMANCE

This section includes questions related to the past performance of proposer and should be answered with sufficient detail to aid evaluation of technical submittal.

1. Has Proposer conducted Buy America Audits and/or vehicle inspections previously?
2. Were the audits and/or vehicle inspections conducted successfully with minimal to zero infractions?
3. Provide a brief description of any lessons learned from previous work performing Buy America audit activities and/or vehicle inspections.

7. STAFFING AND PROJECT ORGANIZATION

This section should identify Proposer's team, specifically identifying the Proposer's key staff members who will serve NVTA. Include only those persons who are currently expected to work with NVTA throughout the term of this agreement. Provide resumes only for those persons expected to work on the project scope of this RFP, highlighting relevant experience working with similar engagements with public entities. Resumes must be kept to no more than two (2) pages and can be included as an appendix to the proposal.

List any present activities and job commitments and potential or real conflicts of interest.

8. EXCEPTIONS TO THE AGREEMENT

This section shall include any exceptions the proposer has taken to NVTA Sample Professional Service Agreement (PSA), ATTACHMENT C, of this RFP.

9. APPENDICES

Under this section, proposers shall provide all required forms. These documents are not counted towards the 20- page limit.

SECTION IV - SCOPE OF WORK

(Attached)

SCOPE OF WORK

Introduction

The Napa Valley Transportation Authority (NVTA) is seeking a qualified Contractor who must serve as an Auditor independent from the manufacturer and the manufacturer's agents IAW FTA's Pre-Award and Post-Delivery Audit and Buy America regulations, to perform Buy America pre-award and post-award audits and vehicle quality inspections. Additionally, Contractor will be responsible for performing vehicle inspections per Task 2 of the scope of work.

NVTA plans to conduct the procurement of NVTA buses over a three (3) year period with two (2) one-year options. In 2025, NVTA purchased fourteen (14) 40-foot electric buses from Gillig with the expectation to begin production on May 19, 2025. The pre-award audit will be required during the production process of these buses. NVTA anticipates the need for pre-award and post-delivery audit services for additional bus purchases as outlined in the schedule below. As a result, NVTA intends to make an award from this solicitation for three (3) years with two (2) one-year options. All these buses are subject to the Federal Transit Administration (FTA) [Buy America requirements, 49 CFR part 661](#), [Pre-Award and Post-Delivery Audits, 49 CFR part 663](#) and [49 CFR part 571 Federal Motor Vehicle Standards](#). Additional regulations may apply. [FTA's Best Practices Handbook](#) is made available, EXHIBIT A, to this RFP for further guidance on what is expected of the incoming Contractor. Additionally, the Contractor will be performing vehicle quality inspections before each bus placed into service.

Based on NVTA's current funding, NVTA anticipates procuring new buses according to the schedule below; however, this schedule is subject to change dependent upon funding:

Calendar Year	Bus Procurements	Procured	Funding Source
2025	14	Yes	Bus & Bus Facilities Grant (8); Low- or No-Emission Grant (6)
2026	8	No	TBD
2027	8	No	TBD
2028	TBD	TBD	TBD
2029	TBD	TBD	TBD

Task 1 and 2: Pre-Award and Post-Delivery Audits

Contractor must adhere to the most current Buy America Pre-Award and Post-Delivery Audit regulatory requirements when conducting the audits necessary. EXHIBIT A, FTA's Best Practices Manual, references the regulatory requirements and provides guidance on how to perform the functions required. Additionally, there are sample templates included as an appendix to the manual.

Task 3: Vehicle Quality Inspections

NVTA seeks an independent contractor or subcontractor to conduct detailed vehicle quality inspections for the fourteen (14) electric Gillig buses. These inspections will occur before the buses

are accepted and placed into service to ensure the vehicles meet NVTA's technical specifications and quality standards.

Vehicle Quality Inspections shall include, but not be limited to:

1. Inspection and Reporting:

Contractor shall inspect NVTA procured vehicles at critical points in the production process. The critical inspection points may include but are not limited to:

- Frame and Chassis Assembly (early production)
- Body Shell and Exterior Panel Assembly (following structural assembly)
- Installation of Mechanical and Electrical Systems (mid-assembly)
- Comprehensive pre-delivery quality inspection

Following each inspection, contractor shall complete a detailed inspection report for each vehicle. The report must include:

- o Status of the vehicle order. Inspector's notes detailing findings, issues, and corrective actions taken.
- o Photographs of any problem areas and confirmation of fixes.
- o Any in-plant QC/QA forms documenting inspections or issues encountered during production.
- o These inspection records should be based on continuous monitoring of the vehicle during production and ensure that quality control is maintained throughout the manufacturing process.

2. Production and Quality Assurance Inspections:

The contractor is responsible for performing **acceptance testing** and **pre-delivery inspections** of the vehicles, documenting the vehicle's performance, and ensuring that all inspections are completed before delivery to NVTA.

- o The contractor may propose additional services to enhance inspection and quality assurance during vehicle production.
- o The contractor may provide engineering expertise to evaluate manufacturer engineering changes and the emergency use of non-conforming components or materials.
- o The contractor shall perform acceptance testing and inspection of vehicles prior to delivery to NVTA.

3. Critical Vehicle Production Elements:

To ensure the vehicles meet NVTA's strict standards, the contractor shall inspect vehicles for structural integrity and build quality at various points in the production process and prior to the

transfer of title. At minimum, the contractor shall inspect the following areas, including but not limited to:

- Structure and Assembly Integrity:
 - Monitor and evaluate the critical buildup of components such as sidewalls, floor, and roof structures.
 - Visually verify the joining of sidewall, roof, and floor structures to ensure proper bonding and alignment.
 - Inspect and verify the assembly and attachment of all body components to ensure secure installation.
- Leaks and Fluid Systems:
 - Visually identify and verify the repair of any air or fluid leaks in the vehicle's systems. This includes inspecting all lines, hoses, and connections for leaks.
- Routing, Dressing, and Protection:
 - Evaluate the routing and dressing of lines, hoses, and wiring, ensuring that these components are properly protected from abrasion, sharp edges, and that adequate supports are in place to prevent wear and tear.
- Component Uniformity and Installation:
 - Verify the uniformity of components, ensuring all parts are aligned and properly installed, including critical adjustments such as steering, steering column, and tile mechanism.
 - Inspect slack adjusters, door operations, fan shroud clearances, and belt tensions to ensure proper function and safety.
- Door and Panel Alignments:
 - Visually inspect the alignment of access doors, hinges, and other body panels (both interior and exterior), ensuring proper fit and functionality.
- Paint and Coatings:
 - Inspect the thickness, type, and adhesion of primers, paints, and all coatings applied to the vehicle to ensure they meet NVTA's requirements for durability and finish.
- Suspension and Axle Installations:
 - Verify the proper alignment and installation of engine mounting, suspension members, and axle mountings, ensuring that all components are securely attached and function according to NVTA specifications.
- Functional Systems and Subsystems:
 - Ensure the proper function of all installed systems and subsystems (e.g., air conditioning, doors, electrical systems), performing any necessary testing to confirm full operational capability.
- Quality Assurance During Final Assembly:
 - Inspect the final assembly process to ensure that all major components are properly assembled, adjusted, and secured before vehicle delivery. The inspector should be particularly focused on:
 - Ensuring proper function of critical systems such as the steering and braking systems.
 - Verifying final component installation, ensuring that parts are not missing or improperly installed.

SECTION V - REQUIRED QUALIFICATIONS

A. Proposer and its sub-consultant(s) must be licensed by the State of California.

Please provide evidence on each of the areas listed above.

SECTION VI - EVALUATION AND AWARD

A. Evaluation Method

NVTA will review and evaluate all proposals including cost proposal for determination of responsiveness and responsibility. Only those Proposer's deemed responsive/responsible will be considered for award.

B. Negotiations

Following the analysis of the written proposals, NVTA may negotiate with all the Proposers found to be within the cost competitive range to develop a Best and Final Offer decision. If negotiations with any Proposers are unsuccessful, or if any Proposer declines the work offered, then negotiations will proceed with the next Proposer from the proposal list, and so forth until a Proposer is selected.

C. Contract Award

Upon conclusion of the interviews, if any, and best and final offer, NVTA submit the final negotiated contract to the NVTA Board for approval, if applicable.

SECTION VII - NON-DISCRIMINATION

Proposers shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, religious creed, color, national origin, ancestry, denial of family and medical care leave, medical condition (cancer/genetic characteristics) physical handicap, disability (mental or physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation, marital status, age (40 and above), in the performance of NVTA contracts. Proposers and any subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

Proposers shall include the non-discrimination and compliance provisions of the above clause in all subcontracts to perform work under this contract.

SECTION VIII - LEVINE ACT

Proposers will be required to disclose on the record any contribution of more than \$250 which they have made to an NVTA Board Member within the twelve-month period preceding the submittal deadline of this RFP, and within the twelve-month period preceding any subsequent procurement based on this RFP. This applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation, which is part of your team. If you have made a contribution which needs to be disclosed you must provide written notice of the date, amount and receipt of the contribution(s) to NVTA Executive Director. This information will need to be provided before the NVTA can approve any contract.

SECTION IX - DISADVANTAGED BUSINESS ENTERPRISE

NVTA has adopted a Disadvantage Business Enterprise (DBE) Policy, pursuant to which the NVTA encourages all prime proposers to utilize qualified DBE subcontractors on NVTA projects, NVTA promotes the direct purchase of goods from qualified DBEs by utilizing DBE vendors when such vendors are available and the price of the goods sought is reasonable, and, for professional services contracts, NVTA seeks the utilization of qualified DBEs when such DBEs are available. All prime proposers are required to report on DBE usage during the term of each contract. For instructions and forms, see Required Forms, ATTACHMENT A.

For purposes of NVTA's DBE Policy, a DBE shall be a "Disadvantage Business" within the meaning of 13 CFR Part 121 and California Government Code Section 14837. In the event that the NVTA's DBE Policy conflicts with any Federal, State or other funding source's programs, policies, regulations or requirements, NVTA shall make the DBE Policy consistent with said funding source's programs, policies, regulations and requirements to the extent permissible by law. NVTA's DBE Policy is neutral as to race, ethnicity, national origin, age, sex, religion, sexual orientation and other protected classes.

The DBE goal for this contract is 0% NVTA's overall 3-year annual DBE goal is 2.6%.

SECTION X - INDEMNIFICATION AND INSURANCE REQUIREMENTS

Insurance requirements for this project are set forth in ATTACHMENT C, NVTA Sample Professional Service Agreement for Services, Section 7 – Insurance and Section 8 – Hold Harmless / Defense / Indemnification.

All inquiries pertaining to this RFP should be emailed to Renel Coombs, Procurement and Contracts Administrator, at the following email address rcoombs@nvta.ca.gov in accordance with the procurement schedule. Responses to all questions submitted by the question deadline that may have a material impact on the proposal will be posted on the NVTA website: www.nvta.ca.gov.

Late proposals may not be considered.

Proposals will be accepted by means of electronic mail (email) addressed as follows:

Kate Miller
Executive Director
Napa Valley Transportation Authority
625 Burnell Street.
Napa, CA 94559

RFP No. 25-R25

Attachments to follow.

ATTACHMENT A REQUIRED FORMS

(Attached)

GENERAL INFORMATION FORM

(To be completed by the Proposer and placed at the front of the Proposal)

Legal Name of Proposer:

Date:

Street Address:

Telephone Number:

City/State/Zip:

Proposer's Fax Number:

DBE Cert # _____ SBE Cert # _____ Other Cert # _____ None

Type of Organization:
(Corporation, LPA, Sole Proprietorship, Partnership, etc.)

Business License (documented):

Taxpayer ID Number (Federal):

Name and Title of Manager:

Name, Title, e-mail address, and Phone Number of Person Correspondence should be directed to:

DBE Cert # _____ SBE Cert # _____ Other Cert # _____ None

Signature, Name and Title of Person Signing

ACKNOWLEDGEMENT OF ADDENDA

The undersigned acknowledges receipt of the following addenda to the documents.

Addendum No. 1 _____ Dated _____

Addendum No. 2 _____ Dated _____

Addendum No. 3 _____ Dated _____

Addendum No. 4 _____ Dated _____

PROPOSER/BIDDER: _____

Street Address

City, State, Zip

Signature Authorized Signing Official

Title and Date

LOBBYING CERTIFICATION

The PROPOSER certifies, to the best of its knowledge and belief, that:

- (1) No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a Federal department or agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification thereof.
- (2) If any funds other than Federally appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instruction, as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE PROPOSER, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE PROPOSER OR PROPOSER UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Official Signature of the PROPOSERS Authorized

Authorized Official Name and Title of the PROPOSER's

Date

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder _____, proposed subcontractor _____, hereby certifies that he has _____, has not _____, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Print Name & Title and Signature

Date

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has __ , has not __ been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Bid. Signing this Bid on the signature portion thereof shall also constitute signature of this Statement. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

PUBLIC CONTRACT CODE 10232 STATEMENT

In conformance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Note: The above Statement and Questionnaire are part of the Bid. Signing this Bid on the signature portion thereof shall also constitute signature of this Statement and Questionnaire. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In conformance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes _____ No _____

If the answer is yes, explain the circumstances in the following space or use an attachment.

DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency.
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years.
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

(SIGNATURE OF BIDDER'S AUTHORIZED PERSON)

Name and Title of the BIDDER's Authorized Person

END OF BIDDER'S CERTIFICATION FOR PUBLIC CONTRACT CODE 10285.1, 10232, 10162 AND DEBARMENT AND SUSPENSION SUBMITTED WITH BID

QUESTIONNAIRE AND FINANCIAL ASSURANCE STATEMENT

The following statements as to experience and financial qualifications of the Bidder are submitted in conjunction with the proposal as a part thereof, and the truthfulness and accuracy of the information is guaranteed by the Bidder.

The Bidder has been engaged in the contracting business under the present business for _____ years. Experience in work of a nature similar to that covered in the proposal extends over a period of _____ years.

The Bidder, as a contractor, has never failed to satisfactorily complete a contract awarded to contractor, except as follows:

List all claims and lawsuits presented or filed in the last five (5) years, regardless of the form, regarding any public works project:

The following contracts for work have been completed in the last three (5) years for the persons, firm or authority indicated and to whom reference is made:

Year	Type of Work-Size, Length and Contract Amount	Location and For Whom Performed
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The following complaints have been made against the Bidder's contractor's license within the past ten (10) years:

Date: _____ Nature of Complaint: _____

Reference is hereby made to the following bank or banks as to the financial responsibility of the bidder:

NAME OF BANK

ADDRESS

Reference is hereby made to the following surety companies as to the financial responsibility and general reliability of the bidder:

NAME OF SURETY COMPANY:

I, the undersigned, declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

SIGNATURE OF BIDDER

DATE

NAME OF BIDDER

END OF QUESTIONNAIRE AND FINANCIAL STATEMENT FORM

AFFIDAVIT OF LEVIN ACT DISCLOSURE STATEMENT

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an Officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the Officer, or received by the Officer on behalf of any other Officer, or on behalf of any candidate for office or on behalf of any committee. The Levine Act also requires disclosure of such contributions by a party to be awarded a specified contract. Please refer to the attachment for the complete statutory language.

Current members of the NVTA Board of Directors are:

Scott Sedgley	Amber Manfree	Paul Dohring	Mark Joseph
Liz Alessio	Margie Mohler	Donald Williams	Kevin Eisenberg
Robin McKee	Michelle Deasy	Pierre Washington	Bernie Narvaez

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any NVTA Director(s) in the 12 months preceding the date of the issuance of this request for proposal or request for qualifications?

___ YES ___ NO

If yes, please identify the Director(s): _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any NVTA Director(s) in the three months following the award of the contract?

___ YES ___ NO

If yes, please identify the Director(s): _____

Answering yes to either of the two questions above does not preclude NVTA from awarding a contract to your firm. It does, however, preclude the identified Director(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

California Government Code Section 84308

(a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

(e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

For more information, contact the Fair Political Practices Commission, 1102 Q St #3000, Sacramento, CA 95811, (916) 322-5660.

End of Disclosure Statement

CALTRANS DBE/ DBE REQUIREMENTS

NVTA has established a Disadvantage Business Enterprise goal for this Agreement of 0 %.

OR



NVTA has not established a DBE Goal for this Agreement' however, Contractor is encouraged to obtain DBE participation for this Agreement

1. GENERAL PROVISIONS

This Project is subject to Title 49 Code of Federal Regulations Part 26.13 (b) (49 CFR 26.13) that states:

"The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

Contractor's attention is directed to the following provisions:

- A. Any subcontract entered into as a result of this Project shall contain all of the provisions of this Section.
- B. Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the Contract (49 CFR 26).
- C. Make work available to Disadvantaged Business Enterprises (DBE) and select work parts consistent with available DBE sub-Contractors.
- D. Meet the specified DBE participation goal or demonstrate that adequate good faith efforts were made to meet this goal; or if there is no specified DBE goal use good faith efforts for participation.
- E. Verify that the DBE proposer is certified as DBE. For a list of certified DBEs, follow the link http://www.dot.ca.gov/hq/bep/find_certified.htm for access to the CUCP database. There is no specific certification for DBE proposers; however the CPUC database breaks down DBE proposers by gender and ethnicity to facilitate locating DBE proposers.
- F. Contractor is responsible to be fully informed regarding the requirements of 49 CFR Part 26 and Caltrans DBE programs.

2. SUBMISSION OF DBE COMPLIANCE DOCUMENTATION

- A. If there is a DBE goal for the Contract, a "Local Agency Proposer -DBE – Information (Proposer Contract)" (Attachment E-1) form shall be completed and submitted with the executed contract. The purpose of the form is to collect all DBE commitment data required under 49 CFR 26. For contracts with no goals, this form collects information on all DBEs. Even if no DBE participation will be reported, the successful bidder must execute and return the form.
- B. The information provided on the form should include with names, addresses and phone numbers of DBE proposers that will participate, with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A successful Contractor certified as a DBE should describe the work it has committed to perform with its own forces as well as any other work that it has committed to be performed by DBE sub-proposers and suppliers.
The Contractor is encouraged to provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract.

If a DBE is participating as a joint venture partner, the successful Contractor is encouraged to submit a copy of the joint venture agreement.

3. DBE PARTICIPATION

It is the Contractor's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business proposer defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime Contractor, subcontractor, joint venture partner, as a vendor of material supplies, or as a trucking company. *Page 52 of 61*
- C. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions

thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

- D. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE proposer must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
 - E. The prime Contractor shall list only one subContractor for each portion of work as defined in their proposal and all DBE subContractors should be listed in the cost proposal list of subContractors.
 - F. A prime proposer who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subproposers.
4. MATERIALS OR SUPPLIES PURCHASED FROM DBE'S COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A, PURCHASES WILL COUNT TOWARDS THE GOAL UNDER THE FOLLOWING CONDITIONS:
- A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent of the cost of the materials or supplies. A DBE manufacturer is a proposer that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
 - B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies. A DBE regular dealer is a proposer that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the proposer must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
 - C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
 - D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
5. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBES WILL COUNT TOWARDS DBE CREDIT UNDER THE FOLLOWING CONDITIONS:
- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
 - B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
 - C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
 - D. The DBE may lease trucks from another DBE proposer, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
 - E. The DBE may also lease trucks from a non-DBE proposer, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
 - F. For the purposes of this Section 5, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
6. PERFORMANCE OF DBE CONTRACTORS AND DBE SUBCONTRACTORS /SUPPLIERS
- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the proposer to be paid under the Agreement is with the work it is actually performing, and other relevant factors.

- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

7. FINAL REPORT

Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors," CEM-2402F (Exhibit 17-F in Chapter 17 of the LAP), certified correct by the CONTRACTOR or the Contractor's authorized representative and shall be furnished to NVTA with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors" is submitted to NVTA.

8. DBE CERTIFICATION AND DE-CERTIFICATION STATUS

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to NVTA within 30 days.

Local Agency Proposer DBE Information (Proposer Contracts)

NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS

AGENCY: _____ LOCATION: _____

PROJECT DESCRIPTION: _____

TOTAL CONTRACT AMOUNT: \$ _____

PROPOSAL DATE: _____

PROPOSER'S NAME: _____

CONTRACT ITEM NO.	DESCRIPTION OR SERVICES TO BE SUBCONTRACTED	DBE Cert. No. AND EXPIRATION DATE	NAME OF DBEs (Must be certified on the date bids are opened - include DBE address and phone number)	PERCENTAGE OF DBE

For Local Agency to Complete:

Local Agency Contract Number: _____

Federal Aid Project Number: _____

Federal Share: _____

Contract Award Date: _____

Total Claimed Participation	\$ _____
	_____ %

Local Agency certifies that the DBE certification(s) has been verified and all information is complete and accurate.

Print Name	Signature	Date
Local Agency Representative		
(Area Code) Telephone Number: _____		

Signature of Proposer	
Date	(Area Code) Tel. No.

INSTRUCTIONS - LOCAL AGENCY BIDDER DBE INFORMATION(PROPOSER
CONTRACTS) (Revised 06/14)

SUCCESSFUL PROPOSER:

The form requires specific information regarding the proposed contract: Agency, Location, Project Description, Federal Aid Project Number (assigned by Caltrans-Local Assistance), Proposal Date, and Successful Proposer's Name.

The form has a column for the Description or Services to be Subcontracted by DBEs. The DBE should provide a certification number to the prime proposer. The form has a column for the Names of DBE certified proposers to perform the work (must be certified on the date the proposal is received and include DBE address and phone number). Enter DBE prime proposer's and subproposers' certification numbers. The prime proposer shall indicate all work to be performed by DBEs including, if the prime proposer is a DBE, work performed by its own forces.

Enter the Total Claimed DBE Participation percentage of items of work in the total DBE Dollar Amount column. (If 100% of item is not to be performed by the DBE, describe the exact portion of time to be performed by the DBE.) See Notice to Proposers/Bidders Disadvantaged Business Enterprise Information to determine how to count the participation of DBE proposers.

Attachment E-2 must be signed and dated by the successful proposer at contract execution. Also list a phone number in the space provided and print the name of the person to contact.

For the successful proposer, Local agencies should complete the Contract Award Date and Federal Share fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of contract execution. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all information is complete and accurate. Once the information has been verified, the District Local Assistance Engineer signs and dates the form.

DBE Information – Good Faith Efforts

Federal-aid Project No. _____ Bid Opening Date _____

NVTA established an Disadvantaged Business Enterprise (DBE) goal of 0% for this project. NVTA has an overall DBE Goal of 2.8%. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the “Local Agency Bidder –DBE Commitment” form indicates that the bidder has met the goal. This will protect the bidder’s eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a proposer was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the “Local Agency Bidder –DBE Commitment” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled “Submission of DBE Commitment” of the Special Provisions:

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

Publications	Dates of Advertisement
_____	_____
_____	_____
_____	_____

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Names of DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C. The items of work which the bidder made available to DBE proposers, including, where appropriate, any breaking down of the contract work items (including those items normally

performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE proposers.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount(\$)	Percentage Of Contract
<hr/>				
<hr/>				
<hr/>				

D. The names, addresses and phone numbers of rejected DBE proposers, the reasons for the bidder's rejection of the DBEs, the proposers selected for that work (please attach copies of quotes from the proposers involved), and the price difference for each DBE if the selected proposer is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of proposers selected for the work above:

E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime CONTRACTOR or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE proposers (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results
<hr/>		
<hr/>		
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H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

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APPENDIX D

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER -- MATRICES

A. THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 2.f
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 3.f
Access to Third Party Contract Records		§ 15.t
Changes to Federal Requirements		§ 2.c(1)
Civil Rights (Title VI, ADA, EEO (except special DOL construction clause))		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.d
Incorporation of FTA Terms	Per FTA C 4220.1F.	§ 15.a
Awards Exceeding \$10,000		
Terminations	If 49 CFR Part 18 applies.	§ 11 and § 15.a, which incorporate 49 CFR Part 18
Special EEO provision for construction contracts	If 49 CFR Part 18 or Part 19 indicate that the DOL EEOC regulations at 41 C.F.R. Chapter 60 apply.	§ 15.a, which incorporates 49 CFR Part 18 and Part 19
Awards Exceeding \$25,000		
Debarment and Suspension		§ 3.b
Awards Exceeding the Simplified Acquisition Threshold (\$100,000) (As of February 2011, OMB has not to date adopted the FAR clause 2.101 \$150,000 standard for grants.)		
Buy America	When tangible property or construction will be acquired.	§ 14.a
Resolution of Disputes, Breaches, or Other Litigation		§ 56
Awards Exceeding \$100,000 by Statute		
Lobbying	OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 3.d
Clean Air		§ 25.b
Clean Water		§ 25.c

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PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER — MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 14.b
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 14.c
Construction Activities		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000.	§ 24.a(1)
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.a(2)
Construction Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000.	§ 24.a(3)
Bonding for Construction Activities Exceeding \$100,000	5% bid guarantee bond. 100% performance bond. Payment bond equal to: – 50% for contracts < \$1M. – 40% for contracts > \$1M – < \$5M. – \$2.5M for contracts > \$5M.	§ 15.o(1)
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.e
Nonconstruction Activities		
Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.b
Transit Operations		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions.	§ 32.b
Alcohol Misuse and Testing	Safety sensitive functions.	§ 32.b

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PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

A. THIRD PARTY CONTRACT PROVISIONS (Continued)

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(17) 10-1-2010)
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States		§ 38
Miscellaneous Special Requirements		
Energy Conservation		§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA.	§ 15.k
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 15.m
ADA Access	Contracts for rolling stock or facilities construction/renovation.	§ 12.g
Assignability Clause	Procurements through assignments.	§ 15.a, which incorporates 49 CFR Part 18 and 49 CFR Part 19

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PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.	>\$100,000 As of Feb. 2011, FTA has not adopted the FAR 2.101 \$150,000 standard.
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Water	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Cargo Preference			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.

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PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES**B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)**

(excluding micro-purchases, except Davis-Bacon requirements apply to construction contracts exceeding \$2,000)

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted).	>\$100,000	>\$100,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				\$100,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
Transit Employee Protective Arrangements		Transit operations.			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations.			
Alcohol Misuse and Testing		Transit operations.			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Conformance with ITS National Architecture	ITS projects.	ITS projects.	ITS projects.	ITS projects.	ITS projects.
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States.	Limited to States.	Limited to States.	Limited to States.	Limited to States.

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PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

C. CERTIFICATIONS, REPORTS, AND FORMS

CERTIFICATIONS, REPORTS, AND FORMS	COMMENTS	REGULATORY REFERENCE
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with a major changeover changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron or manufactured products exceeding \$100,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Preaward Purchaser’s Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding procurements exceeding \$100,000.	49 CFR Part 663
Post Delivery Purchaser’s Requirement	All rolling stock procurements to the extent required by Federal law and regulations.	49 CFR Part 663
On-Site Inspector’s Report	Rolling Stock except for procurements of: -10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663
Federal Motor Vehicle Safety Standards Preaward Review and Post Delivery	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663
Lobbying	Procurements exceeding \$100,000.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.

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PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES

D. OTHER MATTERS

OTHER MATTERS	COMMENTS	STATUTORY OR REGULATORY REFERENCES
Contract Administration System		49 CFR § 18.36(b)(2) 49 CFR § 19.47
Record of Procurement History		49 CFR § 18.36(b)(9) 49 CFR § 19.47
Protest Procedures		49 CFR § 18.36(b)(12)
Selection Procedures		49 CFR § 18.36(c)(3)
Cost/Price Analysis		49 CFR § 18.36(f) 49 CFR § 19.45
Justification for Noncompetitive Awards	If Applicable.	49 CFR § 18.36(b)(9) by implication 49 CFR § 19.46(b)
No Excessive Bonding Requirements		49 CFR § 18.36(h) 49 CFR § 19.48(c)(5)
No Exclusionary Specifications		49 U.S.C. § 5325(h)
No Geographic Preferences	Except for A&E Services	49 CFR § 18.36(c)(2)



REFERENCES

Please provide at least three (3) references that have used your company to purchase a similar product or service. Include contact name, business name, address, telephone number, and email address.

Company Name:	Contact Name:
Email:	Telephone:
Address:	Brief Description of Business Interaction

Company Name:	Contact Name:
Email:	Telephone:
Address:	Brief Description of Business Interaction

Company Name:	Contact Name:
Email:	Telephone:
Address:	Brief Description of Business Interaction

ATTACHMENT B COST PROPOSAL

(Attached; fillable excel cost proposal sheet attached separately in solicitation folder on website)



RFP 25-R25 COST PROPOSAL - COVER SUMMARY SHEET

INSTRUCTIONS

- 1) The total cost of all items combined should be a not-to-exceed cost proposal.
- 2) Proposer can edit the spreadsheet and add additional detail as necessary.
- 3) Estimate cost for Pre-Award and Post-Delivery Audits per vehicle for a total of four (4) visits per year.
- 4) Add as an attachment, detailed services provided relative to the costs listed here.
- 5) Add as an attachment, a rate sheet if costs are estimated on an hourly basis.

TASKS	Total Unit	Number of Units	TOTAL COSTS	Comments
1. YEAR ONE PRE-AWARD AND POST DELIVERY AUDITS	0	0	0	
			0	
			0	
			0	
2. YEAR ONE VEHICLE QUALITY INSPECTIONS PER VEHICLE	0	0	0	
			0	
			0	
			0	
3. YEAR TWO PRE-AWARD AND POST DELIVERY AUDITS	0	0	0	
			0	
			0	
			0	
4. YEAR TWO VEHICLE QUALITY INSPECTIONS PER VEHICLE	0	0	0	
			0	
			0	
			0	
5. YEAR THREE PRE-AWARD AND POST DELIVERY AUDITS	0	0	0	
			0	
			0	
			0	
6. YEAR THREE VEHICLE QUALITY INSPECTIONS PER VEHICLE	0	0	0	
			0	
			0	
			0	
7. OPTION YEAR ONE PRE-AWARD AND POST DELIVER AUDITS	0	0	0	
			0	
			0	
			0	
8. OPTION YEAR ONE VEHICLE QUALITY INSPECTIONS PER VEH	0	0	0	
			0	
			0	
			0	
9. OPTION YEAR TWO PRE-AWARD AND POST DELIVER AUDITS	0	0	0	
			0	
			0	
			0	
10. OPTION YEAR TWO VEHICLE QUALITY INSPECTIONS PER VEH	0	0	0	
			0	
			0	
			0	
	0	0	0	
			0	
			0	
TOTAL COST			0	

****** FIRM'S DETAILED COST PROPOSAL & RATES ATTACHED ******

ATTACHMENT C SAMPLE AGREEMENT

(Attached Separately)



NAPA VALLEY TRANSPORTATION AUTHORITY (NVTA)

AGREEMENT NO. 25-C21

THIS AGREEMENT is made and entered into as of this _____ day of _____, 20____, by and between the Napa Valley Transportation Authority, a joint powers agency under the laws of the State of California, hereinafter referred to as “NVTA”, and (add entity type and registered State to do business if applicable) whose mailing address is _____, hereinafter referred to as “CONTRACTOR”;

RECITALS

WHEREAS, NVTA wishes to obtain specialized services in order to _____; and

WHEREAS, NVTA has authorized the NVTA Executive Director to enter into a contract for services at its _____ meeting; and (delete this clause if within signature authority)

WHEREAS, CONTRACTOR is willing and has been determined to be qualified to provide such specialized services to NVTA under the terms and conditions set forth herein;

TERMS

NOW, THEREFORE, NVTA hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve NVTA in accordance with the terms and conditions set forth herein:

- 1. Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on _____, 20____ unless earlier terminated as provided herein, except that the obligations of the parties under “Insurance” and “Indemnification” shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to NVTA shall also continue after said expiration date or early termination in relation to the obligations prescribed by “Confidentiality,” “Taxes,” and “Access to Records/Retention”).
- 2. Scope of Services.** CONTRACTOR shall provide NVTA those services set forth in CONTRACTOR’s proposal (EXHIBIT A), attached hereto and incorporated by reference herein. EXHIBIT A is provided solely to describe the services to be provided. Any terms contained in EXHIBIT A that add to, vary or conflict with the terms of this Agreement are null and void.

3. Compensation.

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, NVTA shall pay CONTRACTOR at the rate set forth in EXHIBIT B, attached hereto and incorporated by reference herein.

(b) Expenses. Unless explicitly agreed in writing, no direct expenses, including travel or other expenses, will be reimbursed by NVTA.

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of \$ _____ for professional services and expenses; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered.

4. Method of Payment.

(a) Invoices. All payments for compensation shall be made only upon presentation by CONTRACTOR to NVTA of an itemized billing invoice in a form acceptable to the NVTA Director Administration, Finance and Policy which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. CONTRACTOR shall submit invoices not more often than every 30 days to NVTA Accounts Payable at 625 Burnell Street, Napa, CA 94559 or electronically to ap@nvta.ca.gov, who after review and approval as to form and content, shall submit the invoice to the NVTA Director Administration, Finance and Policy no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that NVTA may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be maintained on file with the Secretary of NVTA's Board of Directors at all times during the term of this Agreement in a form satisfactory to the NVTA Director Administration, Finance and Policy. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

5. Independent Contractor. CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, NVTA employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that NVTA may monitor the work performed by CONTRACTOR. NVTA shall

not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that CONTRACTOR, including the agents or employees of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, NVTA, in addition to any other rights or remedies which NVTA may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation insurance. CONTRACTOR will provide workers' compensation insurance as required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of the CONTRACTOR's duties under this Agreement; including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide NVTA with certification of all such coverage's upon request by NVTA's Risk Manager.

(b) Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverage's, issued by a company licensed (admitted) to transact business in the State of California and/or having a A.M. Best rating of A VII or better:

1. General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement.

2. Professional Liability/Errors and Omissions. Professional liability/errors and omissions insurance for all activities of CONTRACTOR arising out of

or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

3. Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence.

(c) Certificates. All insurance coverage's referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of NVTA's Risk Manager, demonstrated by other evidence of coverage acceptable to NVTA's Risk Manager, which shall be filed by CONTRACTOR with NVTA's Deputy Executive Director prior to commencement of performance of any of CONTRACTOR's duties; shall be kept current during the term of this Agreement; shall provide that NVTA shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. For the commercial general liability insurance coverage referenced in 7(b)(1) and, where the vehicles are covered by a commercial policy rather than a personal policy, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming NVTA, its officers, employees, agents and volunteers as additional insureds and waiving subrogation, and the certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement then the limits in the applicable certificate relating to the additional insured coverage of NVTA shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to NVTA with respect to any insurance or self-insurance programs maintained by NVTA. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94. Upon request by NVTA's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) Deductibles/Retentions. Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, NVTA's Risk Manager, which approval shall not be denied unless the NVTA's Risk Manager determines that the deductibles or self-

insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by NVTA's Risk Manager if it is determined that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects NVTA, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

8. **Hold Harmless/Defense/Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify NVTA and the officers, agents, employees and volunteers of NVTA from and against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from **Choose one:** all acts or omissions **or, if an architect, engineer or surveyor,** , pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the sole negligence or willful acts of NVTA or its officers, agents, employees, volunteers, or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

9. **Employee Character and Fitness.** CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR, shall hold NVTA and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

10. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within 20 days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving 10 days written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices). NVTA hereby authorizes the NVTA Executive Director to make all decisions

and take all actions required under this Paragraph to terminate the Agreement on behalf of NVTA for cause.

11. **Termination for Convenience.** This Agreement may be terminated by NVTA for any reason and at any time by giving no less than 30 days written notice of such termination and specifying the effective date thereof. NVTA hereby authorizes the NVTA Executive Director to make all decisions and take all actions required under this Paragraph to terminate the Agreement on behalf of NVTA.

12. **Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration of this Agreement or earlier termination of Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of NVTA, the property of and shall be promptly returned to NVTA, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only NVTA shall be entitled to claim or apply for the copyright or patent thereof.

(b) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to NVTA for damages sustained by NVTA by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and NVTA may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to NVTA from CONTRACTOR is determined.

13. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

14. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

NVTA
Kate Miller
Executive Director
625 Burnell Street

CONTRACTOR
[Name]
[Title]
[Address]

15. **Compliance with NVTA Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Board Secretary of NVTA and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by NVTA employees or contractors.

(a) NVTA Policy for Maintaining a Harassment Free Work Environment effective November 18, 2015.

(b) NVTA Drug and Alcohol Policy adopted by resolution of the Board of Directors on November 18, 2015.

(c) Napa County Information Technology Use and Security Policy adopted by resolution of the Napa County Board of Supervisors on April 4, 2005. To this end, all employees and subcontractor's of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the NVTA computer network shall sign and have on file with NVTA prior to receiving such access the certification attached to said Policy.

(d) NVTA System Safety Program Plan adopted by resolution of the Board of Directors on November 18, 2015.

16. **Confidentiality.** Confidential information is defined as all information disclosed to CONTRACTOR which relates to NVTA's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written approval of NVTA, expressed through its Executive Director. Upon cancellation or expiration of this Agreement, CONTRACTOR shall return to NVTA all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by NVTA.

17. **No Assignments or Subcontracts.**

(a) A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of NVTA, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for NVTA to withhold its

consent to assignment. For purposes of this subparagraph, the consent of NVTA may be given by its Executive Director.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

18. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing signed by both Parties. In particular, only NVTA, through its Board of Directors in the form of an amendment of this Agreement, may authorize extra and/or changed work beyond the scope of services prescribed by EXHIBIT A. Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

19. **Interpretation; Venue.**

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

20. **Compliance with Laws.** CONTRACTOR shall observe and comply with all currently applicable Federal, State and local laws, ordinances, and codes, including but not limited to the Federal laws contained in Attachment 1, and as amended from time to time. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractor's shall not deny the benefits thereof to any person on the basis of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental

disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or use of family care leave. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated there under (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of NVTA by the State of California pursuant to Agreement between NVTA and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractor's shall give written notice of their obligations there under to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to NVTA for inspection.

(c) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party; CONTRACTOR shall include all of the provisions of this Section, and any applicable Federal provisions contained in Attachment 1 in all such subcontracts as obligations of the subcontractor.

(NOTE: Include the following paragraphs (d – h) if federal dollars are used in this contract. If not, delete these and the Attachment 1)

(d) Federal Required Clauses. Notwithstanding anything to the contrary in this Agreement, pursuant to 29 C.F.R. 97.36(i), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the Federal Transit Administration for federally funded contracts, to the extent they are applicable to the

services to be provided under this Agreement, and as set forth in Attachment 1, attached hereto and incorporated herein by reference.

(e) Federal Changes - CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in Appendix E for RFP/RFQ #20__-__ and the Master Agreement between NVTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

(f) No Obligation by the Federal Government

1. NVTA and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the NVTA, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(g) Disadvantaged Business Enterprises

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs if CONTRACTOR intends to engage any subcontractors. The national goal for participation of Disadvantaged Business Enterprises (DBE) is ____%. The agency's overall goal for DBE participation is ____%. A separate contract goal has not been established for this procurement. If applicable, CONTRACTOR shall comply with the Disadvantaged Business Enterprise contract provisions/Caltrans Disadvantage Business Enterprise provisions contained in Appendix ____ for RFP # ____ - ____ incorporated herein.

(h) Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All relevant contractual provisions required by DOT, as set forth in FTA Circular 4220.1F shall be compiled by the parties. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONTRACTOR shall not perform any act, fail to perform

any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

21. **Taxes.** CONTRACTOR agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold NVTA harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that NVTA is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish NVTA with proof of payment of taxes or withholdings on those earnings.

22. **Access to Records/Retention.** NVTA, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least seven (7) years after NVTA makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

23. **Authority to Contract.** CONTRACTOR and NVTA each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

24. **Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to NVTA and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as NVTA may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of NVTA relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, NVTA may terminate this Agreement immediately upon giving written notice without further obligation by NVTA to CONTRACTOR under this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that NVTA has developed and approved a Conflict of Interest Code as

required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder "assuming office", "annual", and "leaving office" Statements of Economic Interest as a "consultant", as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless the NVTA Executive Director has determined in writing that CONTRACTOR, although holding a "designated" position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under NVTA's Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

25. **Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude NVTA from publishing or otherwise distributing applications and information regarding NVTA job openings where such publication or distribution is directed to the general public.

26. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

27. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

28. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

29. **Entirety of Contract.** This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

30. **Extensions Authorized.** The Executive Director is delegated authority to execute amendments to extend the term of this Agreement, if needed from time to time.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

"NVTA"

"CONTRACTOR"

[NAME OF CONTRACTOR]

By _____
KATE MILLER, Executive Director

By _____
NAME, Title, Signature

ATTEST:

By _____
KARALYN E. SANDERLIN, Board Secretary

By _____
NAME, Title, Signature

Approved as to Form:

By _____
NVTA General Counsel

SAMPLE

ATTACHMENT 1 – FEDERAL CONTRACT REQUIREMENTS

1. AMENDMENTS

Any changes in the activities to be performed under this Agreement shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the NVTA Executive Director or a designated representative and CONTRACTOR. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed amendment.

2. TERMINATION

Contractor's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement, and may be cause for termination of the Agreement.

3. RETENTION OF RECORDS

Contractor agrees to keep, in accordance with generally accepted accounting principles, all records pertaining to the project for audit purposes for a minimum of three (3) years following final payment to Contractor or four (4) years following the fiscal year of the last expenditure under this Agreement, whichever is longer, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NVTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

4. AUDITS

Contractor agrees to grant NVTA or any agency that provides NVTA with funds for the Project, including but not limited to, the U.S. Department of Transportation, FTA, the Comptroller General of the United States, the State, and their authorized representatives access to Contractor's books and records for the purpose of verifying that funds are properly accounted for and proceeds are expended in accordance with the terms of the Agreement. All documents shall be available for inspection during normal business hours at any time while the Project is underway, and for the retention period specified herein. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Contractor further agrees to include in all its third-party contracts hereunder a provision to the effect that the contractor agrees that NVTA, the U.S. Department of Transportation, FTA, the Comptroller General of the United States, the State, or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, during normal business hours, for the term specified above. The term "contract" as used in this clause excludes agreements not exceeding \$25,000.

5. LICENSE TO WORK PRODUCTS (reserved)

6. EQUAL EMPLOYMENT OPPORTUNITY/ CIVIL RIGHTS

In accordance with Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132; and 49 U.S.C. § 5332 for federally funded projects, Contractor agrees that it will not, on the grounds of race, religious creed, color, national origin, age, physical disability, or sex, discriminate or permit discrimination against any employee or applicant for employment

7. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Napa Valley Transportation Authority to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE. A DBE contract goal of 0 percent has been established for this contract. The bidder/offeree shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeree will be required to submit the following information:

- (a) the names and addresses of DBE firms that will participate in the contract;
- (b) a description of the work that each DBE firm will perform;
- (c) the dollar amount of the participation of each DBE firm participating;
- (d) Written documentation of the bidder/offeree's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
- (e) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (d); and
- (f) if the contract goal is not met, evidence of good faith efforts.

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contract receives from NVTA. The prime contractor agrees further to return retainage payments to each subcontractor within thirty days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time

frame may occur only for good cause following written approval of the NVTA. This clause applies to both DBE and non-DBE subcontracts.

Failure to comply with the terms of this provision may result in any or all of the following actions including but not limited to:

1. A finding of material breach of contract
2. Suspension of payment of invoices
3. Bringing to the attention of the Department

of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties result) provided in 26.109.

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26. Forms 1 and 2 should be provided as part of the solicitation documents.

8. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

In the event that this project is funded by FTA in whole or in part, all contractual provisions required by DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NVTA requests which would cause NVTA to be in violation of the FTA terms and conditions.

9. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES (Reserved)

10. STATE ENERGY CONSERVATION PLAN

Contractor shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6321)

11. DEBARMENT

Contractor certifies that neither it nor any of its participants, principals, or subcontractors is or has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as they are defined in 49 CFR Part 29, by any Federal agency or department. Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by NVTA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to NVTA, the

Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

12. CLEAN AIR AND WATER POLLUTION ACTS

Contractor agrees to comply with the applicable requirements of all standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Clean Water Act (33 U.S.C. § 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). The Contractor agrees to report each violation to NVTA and understands and agrees that NVTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

13. LOBBYING

Contractor agrees to comply with the restrictions on the use of federal funds for lobbying activities set forth in 31 U.S.C. § 1352 and 49 CFR Part 20. In addition, in the event the Agreement exceeds \$100,000, Contractor agrees to comply with the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 and shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each proposal or offer exceeding \$100,000).

14. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify NVTA and the officers, agents, employees and volunteers of NVTA from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, from claims that to the extent they arise out of, pertain to, or relate to the negligent acts or omissions of Contractor or its officers, agents, employees, volunteers, contractors and subcontractors in rendering professional services under this Agreement which constitute negligence, recklessness, or willful misconduct, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence or willful acts of NVTA

or its officers, agents, employees or volunteers or any third parties. Notwithstanding the foregoing, the parties agree that Contractor's obligation to defend the NVTA is solely limited to reimbursing NVTA for its reasonable costs for defending a claim including reasonable attorney's fee, incurred by NVTA which are ultimately determined to be due to Contractor's negligence, recklessness or willful misconduct. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement.

15. COMPLIANCE WITH LAWS

Contractor shall comply with any and all laws, statutes, ordinances, rules, regulations, and requirements of the federal, state or local government, and any agency thereof, including, but not limited to NVTA, the U.S. DOT and FTA, which relate to or in any manner affect the performance of this Agreement. Those law, statutes, ordinances, rules, regulations, and procedural requirements that are imposed on NVTA as a Recipient of federal or state funds are hereby in turn imposed on Contractor (including, but not limited to, 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"), and are herein incorporated by this reference and made a part hereof.

16. BUY AMERICA REGULATIONS

Contractor agrees to comply with 49 U.S.C. 5323(j) and 49CFR Part 661 which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. An Offeror must submit to the FTA recipient the appropriate Buy America certification with all proposals on FTA-funded contracts, except those subject to a general waiver. The Buy America Certification may be found on file in the offices of NVTA. Proposals or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

17. COMPLIANCE WITH FTA REGULATIONS

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NVTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

18. DAVIS-BACON ACT

(a) Minimum wages

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at

rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(iv) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(b) Withholding

The NVT A shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, Trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the NVT A may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c) Payrolls and basic records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is

financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or Trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and Trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the NVT Administration for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government printing office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds.

Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(d) Apprentices and Trainees

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractors or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of Trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training

Administration. Every Trainee must be paid at not less than the rate specified in the approved program for the Trainee level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the Trainee program. If the Trainee program does not mention fringe benefits, Trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a Trainee rate who is not registered and participating in a Training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any Trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a Training program, the contractor will no longer be permitted to utilize Trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, Trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(e) Compliance with Copeland Act requirements: The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(f) Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(g) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(h) Compliance with Davis-Bacon and Related Act requirements: All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) Disputes concerning labor standards: Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes

between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j) Certification of eligibility:

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

19 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(a) Overtime requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages: In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(c) Withholding for unpaid wages and liquidated damages: The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(d) Subcontracts: The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier

subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

20. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(a) Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to NVTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

21. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACT

(a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under

the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject

22. CARGO PREFERENCE-U.S.FLAG

(a) Agreement Clauses. "Use of United States-flag vessels:

(1) Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be

transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading).

(b) Contractor and Subcontractor Clauses. "Use of United States-flag vessels: The contractor agrees-

(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading).

(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

EXHIBIT A

SCOPE OF WORK

CONTRACTOR shall provide NVTA with the following services:

II. COMPLIANCE WITH GOVERNMENT CODE SECTION 7550. As required by Government Code section 7550, each document or report prepared by CONTRACTOR for or under the direction of NVTA pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written report

ATTACHMENT D FTA'S BEST PRACTICES HANDBOOK

FTA

FEDERAL TRANSIT ADMINISTRATION

Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements

*Best Practices Handbook for Recipients,
Auditors, Manufacturers, and Suppliers*

JANUARY 2017

FTA Report No. 0106
Federal Transit Administration

PREPARED BY
Federal Transit Administration



U.S. Department of Transportation
Federal Transit Administration

DEDICATION

To our colleague John G. Bell, who contributed his expertise, untiring resolve, and boundless passion about Buy America to the development of this handbook.

COVER PHOTO

Courtesy of Edwin Adilson Rodriguez, Federal Transit Administration

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Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements

*Best Practices Handbook for
Recipients, Auditors, Manufacturers,
and Suppliers*

JANUARY 2017

FTA Report No. 0106

PREPARED BY

Federal Transit Administration

SPONSORED BY

Federal Transit Administration
Office of the General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

AVAILABLE ONLINE

www.transit.dot.gov

Metric Conversion Table

SYMBOL	WHEN YOU KNOW	MULTIPLY BY	TO FIND	SYMBOL
LENGTH				
in	inches	25.4	millimeters	mm
ft	feet	0.305	meters	m
yd	yards	0.914	meters	m
mi	miles	1.61	kilometers	km
VOLUME				
fl oz	fluid ounces	29.57	milliliters	mL
gal	gallons	3.785	liters	L
ft³	cubic feet	0.028	cubic meters	m ³
yd³	cubic yards	0.765	cubic meters	m ³
NOTE: volumes greater than 1000 L shall be shown in m ³				
MASS				
oz	ounces	28.35	grams	g
lb	pounds	0.454	kilograms	kg
T	short tons (2000 lb)	0.907	megagrams (or "metric ton")	Mg (or "t")
TEMPERATURE (exact degrees)				
°F	Fahrenheit	5 (F-32)/9 or (F-32)/1.8	Celsius	°C

REPORT DOCUMENTATION PAGE		Form Approved OMB No. 0704-0188	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.			
1. AGENCY USE ONLY	2. REPORT DATE January 2017	3. REPORT TYPE AND DATES COVERED	
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6. AUTHOR(S) Office of the General Counsel Federal Transit Administration			
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13. ABSTRACT The Federal Transit Administration's objective in implementing 49 CFR part 661–Buy America Requirements and 49 CFR part 663–Pre-Award and Post-Delivery Audits of Rolling Stock Purchases is to support U.S. jobs and the U.S. manufacturing industry. As part of the federal grant application for any revenue service rolling stock grant, an agency that uses federal funds (recipient) to procure vehicles “must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits” as prescribed by 49 CFR part 663. However, 49 CFR part 663 imposes additional requirements on recipients in terms of ensuring and documenting that the rolling stock to be purchased (pre-award audit) and the rolling stock received (post-delivery audit) comply with FTA's Buy America requirements. This handbook will assist recipients, auditors, rolling stock manufacturers (manufacturers), and subcontractors and suppliers (suppliers) in understanding and correctly applying FTA's pre-award and post-delivery audit requirements for rolling stock vehicle (vehicle) purchases. The overall aim is to guide handbook users through the necessary steps to meet the pre-award audit and post-delivery audit requirements as well as to bring greater uniformity to the way the industry conducts and documents pre-award and post-delivery audits of rolling stock purchases.			
14. SUBJECT TERMS Buy America, pre-award audit, post-delivery audit, rolling stock grant, federal procurement		15. NUMBER OF PAGES 102	
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FOREWORD

The information contained in this Handbook is based on the 49 CFR part 663 Pre-Award and Post-Delivery Audits of Rolling Stock Purchases and 49 CFR part 661 Buy America Requirements.

The guidance in this Handbook does not constitute a determination of compliance with the Department of Transportation (DOT) standards and rules or with your rights or responsibilities under the rules and is not binding on the DOT.

This is a best practices Handbook (a non-binding guidance document) for use by auditors as well as recipients, vendors, and interested members of the public.

ABSTRACT

The Federal Transit Administration's objective in implementing 49 CFR part 661–Buy America Requirements and 49 CFR part 663–Pre-Award and Post-Delivery Audits of Rolling Stock Purchases is to support U.S. jobs and the U.S. manufacturing industry. As part of the federal grant application for any revenue service rolling stock grant, an agency that uses federal funds (recipient) to procure vehicles “must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits” as prescribed by 49 CFR part 663. However, 49 CFR part 663 imposes additional requirements on recipients in terms of ensuring and documenting that the rolling stock to be purchased (pre-award audit) and the rolling stock received (post-delivery audit) comply with FTA's Buy America requirements.

This handbook will assist recipients, auditors, rolling stock manufacturers (manufacturers), and subcontractors and suppliers (suppliers) in understanding and correctly applying FTA's pre-award and post-delivery audit requirements for rolling stock vehicle (vehicle) purchases. The overall aim is to guide handbook users through the necessary steps to meet the pre-award audit and post-delivery audit requirements as well as to bring greater uniformity to the way the industry conducts and documents pre-award and post-delivery audits of rolling stock purchases.

Introduction

The Federal Transit Administration's (FTA) objective in implementing 49 CFR part 661–Buy America Requirements and 49 CFR part 663–Pre-Award and Post-Delivery Audits of Rolling Stock Purchases is to support U.S. jobs and the U.S. manufacturing industry.¹

As part of the federal grant application for any revenue service rolling stock grant, an agency that uses federal funds (recipient) to procure vehicles “must certify to FTA that it will conduct or cause to be conducted pre-award and post-delivery audits” as prescribed by 49 CFR part 663. By signing the FTA Master Agreement, recipients have certified that they will conduct or cause to be conducted the requisite pre-award and post-delivery audits. However, 49 CFR part 663 imposes additional requirements on recipients in terms of ensuring and documenting that the rolling stock to be purchased (pre-award audit) and the rolling stock received (post-delivery audit) comply with FTA's Buy America requirements.²

The purpose of this Handbook is to assist recipients, auditors, rolling stock manufacturers (manufacturers), and subcontractors and suppliers (suppliers) in understanding and correctly applying FTA's pre-award and post-delivery audit requirements for rolling stock vehicle (vehicle) purchases.

The overall aim is to guide Handbook users through the necessary steps to meet the pre-award audit and post-delivery audit requirements as well as to bring greater uniformity to the way the industry conducts and documents pre-award and post-delivery audits of rolling stock purchases.

1.1 Scope

This Handbook applies only to the procurement of rolling stock used in revenue service, which includes new buses, vans, cars, railcars, locomotives, trolley cars, trolley buses, ferry boats, and vehicles used for guideways and incline planes, and intended for public transportation of passengers.³ This Handbook does not apply to: used vehicles; non-revenue service vehicles; vehicle rehabilitations, rebuilds,

¹ These requirements are distinct from the Buy American Act of 1933, which governs procurements made directly by the Federal government.

² See 49 CFR §§ 663.7, 663.21–27, 663.31–39.

³ FTA also defines rolling stock end products as off-vehicle train control, communication, and traction power equipment. See, e.g., Appendix A to 49 CFR § 661.3. This Handbook's guidance is limited to vehicles and does not address Buy America compliance for rolling stock end products (e.g., off-vehicle elements such as train control, communication, and traction power equipment) described in Buy America regulations in 49 CFR § 661.11 (t) through (w).

repowers, or overhauls, undertaken on a recipient's existing vehicles; vehicle end products, such as traction power distribution, signal and control systems, and communications; or the provision of services.

The Handbook describes approaches and recommends processes for recipients to consider in preparing to conduct pre-award and post-delivery vehicle audits from the solicitation phase through the final acceptance of vehicles. The Handbook also includes examples of how to calculate domestic content, and verify and document compliance for all participating parties. The Handbook is designed as a reference tool and a guide that includes recommendations on auditing and compliance topics. It also provides examples as well as sample forms and templates.

In 1995, FTA published two separate Handbooks on this subject, one for rail vehicles and one for buses. This Handbook replaces both of those documents.

Information in this Handbook is subordinate to the regulations in 49 CFR part 661–Buy America Requirements and 49 CFR part 663–Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.

Recipients, auditors, manufacturers, and suppliers should all be familiar with the most current revision of both 49 CFR parts 661 and 663.⁴ It is important to keep current on FTA guidance and final decisions affecting these regulations as published in the *Federal Register* or on the FTA website. The FTA website has links to the regulations, relevant *Federal Register* publications, waivers, and letters of interpretation, frequently asked questions, this vehicle Handbook, and related Dear Colleague letters.

In case of a conflict between the contents of this Handbook and FTA's Buy America regulations and decisions, the regulations and decisions shall control.

1.2 Background

FTA's Buy America requirements apply to third-party procurements by FTA grant recipients. The first Buy America provision was included in the Surface Transportation Assistance Act and is currently codified at 49 U.S.C. 5323(j) and implemented under 49 CFR part 661.⁵ 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. Recipients are required

⁴ The regulations can be found online on the FTA "Buy America" webpage in the "Regulations" Section. <https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america>.

⁵ 49 U.S.C. 5323(j) (formerly sec.165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97– 424); as amended by sec. 337, Pub. L. 100–17; sec. 1048, Pub. L. 102–240; sec. 3020(b), Pub. L. 105–178; sec. 3023(i) and (k), Pub. L. 109–59; sec. 20016, Pub. L. 112-141; sec. 3011, Pub. L. 114-94); 49CFR 1.91.

to conduct pre-award and post-delivery audits of rolling stock under 49 U.S.C. 5323(m), as implemented by 49 CFR part 663.

As a condition to receiving FTA grant funds for the purchase of rolling stock, recipients must certify compliance with Buy America and the pre-award and post-delivery audit requirements.

The recipient must either verify that the vehicles will contain the **required domestic content**⁶ by cost, or request a waiver from FTA. Also, if rolling stock frames or car shells are not produced in the U.S., but the steel or iron used is domestic, and the average cost of a rolling stock vehicle in the procurement is more than \$300,000, then the steel or iron in the frames or car shells shall be included in the domestic content calculation.⁷ In addition, to comply with Buy America, **final assembly of the vehicles must take place in the United States** in accordance with 49 CFR § 661.11. At each phase in the vehicle procurement cycle, there are specific actions that a recipient must take to ensure compliance with 49 CFR part 661 Buy America Requirements and 49 CFR part 663–Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.

Recipients purchasing vehicles must ensure that a pre-award audit, as described in 49 CFR §§ – 27, is **completed before the recipient enters into a formal contract** to purchase vehicles. Similarly, those recipients purchasing vehicles must also ensure that a post-delivery audit, as described in 49 CFR §§ 663.31 – 39, is completed **before the title to the vehicle is transferred** to the recipient or before the rolling stock is placed in revenue service, whichever comes first.

1.3 Organization of Handbook

This Handbook is divided into five major sections addressing the following areas:

- Section 1 – Introduction
- Section 2 – Pre-Award Audit
- Section 3 – Post-Delivery Audit
- Section 4 – Domestic Content Calculations

⁶ Effective October 1, 2015, Congress amended 49 U.S.C. 5323(j) to provide a phased increase in domestic content from more than 60 percent for FY16 & FY17, to more than 65 percent in FY18 & FY19 and more than 70 percent in FY20 and beyond. On September 1, 2016, FTA issued final policy guidance on implementing the phased increase in domestic content. This policy guidance is available at 81 FR 60278 and on FTA’s website at <https://www.transit.dot.gov/buyamerica>.

⁷ See 49 U.S.C. 5323(j)(5). Note that the general Buy America requirements for manufactured products in 49 CFR § 661.5 requiring 100% U.S. steel/iron and 100% of components to be manufactured in the United States are separate and apart from the 49 CFR § 661.11 requirements for rolling stock. Therefore, the structural steel requirements in § 661.5 do not apply to the vehicular steel used in rolling stock, as noted in § 661.5(c).

- Section 5 – Frequently Asked Questions
- Appendices

Each major section presents guidance to recipients, auditors, manufacturers, and component/subcomponent suppliers.

A brief overview of each section of the Handbook is provided below.

Section 1 – Introduction – Describes the objectives, purpose, and scope of the Handbook, background, definitions, relevant references, and acronyms.

Section 2 – Pre-Award Audit – Recommends processes to the recipient for conducting effective pre-award audits. It includes general guidance on best practices during the vehicle solicitation (i.e., source selection and contract award), and contract execution phases to facilitate verification of compliance. It also seeks to clarify requirements and provide guidance to manufacturers and its suppliers about how to prepare documentation to satisfy pre-award requirements.

Section 3 – Post-Delivery Audit – Provides recommended post-delivery audit processes, including a discussion about Post-Delivery Domestic Content Monitoring in [Section 3.1.3.4](#). It includes guidance to clarify the post-delivery requirements of 49 CFR parts 661 and 663. This section includes guidance to assist recipients, auditors, vehicle manufacturers, and suppliers with various aspects of the post-delivery audits. It also describes the information necessary to substantiate compliance.

Section 4 – Domestic Content Calculations – Provides guidance and clarification on methods used to correctly calculate domestic content. This section discusses the distinctions in the treatment of domestic content for components and subcomponents and offers clarification on how to determine what is a component versus a subcomponent. Finally, this section provides an example of calculating domestic content with step by step instructions.

Section 5 – Frequently Asked Questions – Provides FTA responses to FAQs concerning the pre-award and post-delivery audits of rolling stock purchases. The responses also incorporate lessons learned from FTA Project Management Oversight Contractor's (PMOC's) oversight of federally funded projects.

Appendices – Include process checklists, sample certification forms, Buy America waiver references, and sample Buy America audit reports.

1.4 References

The principal references for FTA's Pre-Award and Post-Delivery Audit and Buy America regulations are:

United States Code

- 49 U.S.C. Chapter 53, Section 5323(j)
- 49 U.S.C. Chapter 53, Section 5323(m) Legislation
- Surface Transportation Assistance Act of 1978, Pub. L. 95-599 Surface Transportation Assistance Act of 1982, Pub. L. 97-424
- Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17 Buy America Act of 1988, Pub. L. 100-418
- The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU), Pub. L. 109-59
- The Moving Ahead for Progress in the 21st Century Act, (MAP-21), Pub. L. 112-141 Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94

Regulations

- Buy America Requirements, 49 CFR part 661
- Pre-Award and Post-Delivery Audits, 49 CFR part 663
- Federal Acquisition Regulation; Foreign Acquisition, Exempted Articles, Materials and Supplies, 48 CFR part 25

1.5 Definitions

The definitions below are provided to assist the reader with terms used in the manual. Definitions from the Pre-Award and Post-Delivery Audits of Rolling Stock Purchases Rule (49 CFR part 663) and the Buy America Requirements Rule (49 CFR part 661) are identified in italics. Non-italicized definitions are provided for clarification to assist the reader in correctly implementing the requirements.

Audit: *A review resulting in a report containing the necessary certifications of compliance with Buy America standards, purchaser's requirements specifications, and, where appropriate, a manufacturer's certification of compliance with or inapplicability of the Federal Motor Vehicle Safety Standards. (49 CFR § 663.5).*

Auditor: Person or persons who verify Buy America compliance and prepare pre-award and post-delivery reports. Pre-award and post-delivery audits may be performed directly by recipient staff or by qualified independent auditors. An auditor conducting the pre-award audit must be qualified and independent from the manufacturer and the manufacturer's agents.

Component: Any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location (49 CFR § 661.11(c)). Appendices B and C to section 661.11 provide lists of typical components of buses and rail rolling stock, respectively.

End product: Any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at the final assembly location, that is acquired for public use under a federally-funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s). A list of representative end products is included in Appendix A to 49 CFR § 661.3 End Products.

Final assembly: Final assembly is the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes. If a system is being procured as the end product by the grantee, the installation of the system qualifies as final assembly. 49 CFR 661.11(r). Minimum final assembly requirements are described in Appendix D to section 661.11.

FMVSS: Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration under 49 CFR part 571.

Manufactured product: An item produced as a result of the manufacturing process (49 CFR § 661.3).

Manufacturing process: The application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials (49 CFR § 661.3).

Post-delivery: 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 (49 CFR § 663.5).

Pre-award: That period in the procurement process before the recipient enters into a formal contract with the supplier (49 CFR § 663.5).

Recipient: Any entity that is a recipient of Federal financial assistance from FTA (49 CFR § 663.5).

Rolling stock: Buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, vehicles used for guideways and incline planes. (49 CFR § 663.5).⁸

⁸ Note that Section 661.3 defines rolling stock to include vehicles used for support services. However, pre-award and post-delivery audit requirements do not apply to vehicles used for support services.

Subcomponent: *Any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component in the manufacturing process and that is incorporated directly into a component, but does not include raw materials produced in the United States and then exported for incorporation into a component. (49 CFR § 661.11(f) & (h)-(k)).*

Supplier: Any entity that provides components or subcomponents which are incorporated into the vehicle, either as part of the manufacturing process or during final assembly.

United States: *The several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands (49 CFR § 661.3).*

1.6 Acronyms

CFR	Code of Federal Regulations
DOT	Department of Transportation
FAQ	Frequently Asked Questions
FAST	Fixing America's Surface Transportation Act
FMVSS	Federal Motor Vehicle Safety Standards
FTA	Federal Transit Administration
OEM	Original Equipment Manufacturer
QA/QC	Quality Assurance/Quality Control
U.S.	United States of America
U.S.C.	United States Code

SECTION 2

Pre-Award Audit

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under [49 CFR part 663] is complete before the recipient enters into a formal contract for the purchase of such rolling stock. 49 CFR § 663.21.

The Pre-Award Audit includes making and obtaining required certifications and reviewing the documentation provided by the manufacturer in support of its certification. The Pre-Award Audit is undertaken **before** contract award and is for the purpose of ensuring that the vehicles delivered by the manufacturer will comply with Buy America and the contract specifications.

This section addresses the requirements for a pre-award audit conducted pursuant to the Pre-Award and Post-Delivery Audits of Rolling Stock Purchases regulations.⁹ This section also provides some best practices for the recipient, auditor, manufacturer or supplier, when conducting or participating in a pre-award audit. While FTA does not require the use of these best practices, FTA does encourage all parties to adopt such procedures and processes to the extent they will help achieve compliance. Sample forms and certifications are provided in the appendices.

2.1 Requirements for Pre-Award Audit

Recipients of FTA financial assistance purchasing rolling stock must complete a pre-award audit before entering into a formal contract with a manufacturer. Recipients may perform the audit processes using internal staff or hire third-party auditors to carry out all or some of the review functions on the recipient's behalf. In either case, the person(s) conducting the pre-award audit must be qualified and independent from the manufacturer and the manufacturer's agents.

Appendix A.2 provides useful pre-award checklists.

There are three certifications that must be included in the pre-award audit:

- **Pre-Award Buy America Certification or Pre-Award Buy America Certificate of Non-Compliance**
 - Note: To complete this Certification, the recipient must receive the Manufacturer's Certification of Compliance or Non-Compliance with Buy America Rolling Stock Requirements per 49 CFR § 661.12.

⁹ 49 CFR part 663.

- **Pre-Award Purchaser’s Requirements Certification**
- **Pre-Award Certification of Compliance with or Inapplicability of Federal Motor Vehicle Safety Standards (FMVSS)**

Table 1.
*Pre-Award Audit
Certification
Responsibilities*

	Recipient	Manufacturer
Solicitation		
Pre-Award Buy America Certification (49 CFR § 663.25)	✓	
Pre-Award Buy America Certificate of Non-Compliance (if applicable) (49 CFR § 663.25)	✓	
Certification of Compliance or Non-Compliance with Buy America Rolling Stock Requirements (49 CFR § 661.12)		✓
Pre-Award Purchaser’s Requirements Certification (49 CFR § 663.27)	✓	
Pre-Award FMVSS Compliance Certification (49 CFR § 663.41)	✓	
Pre-Award Certification of FMVSS Inapplicability (49 CFR § 663.43)	✓	

The recipient is responsible for obtaining the Pre-award Buy America Certification, Purchaser’s Requirement Certification, and the FMVSS Certification (if applicable) or the Pre-Award Certification of FMVSS Inapplicability. In order for the recipient to certify Buy America compliance or that it received a Buy America waiver, the recipient must obtain and keep on file the bidder’s or the offeror’s (the manufacturer or supplier) Certification of Compliance (or Non- Compliance) with Buy America Rolling Stock Requirements.¹⁰

2.2 Pre-Award Buy America Certification

The recipient must keep on file a **Pre-Award Buy America Certification** that certifies that:

- There is a letter from FTA granting a waiver from the Buy America requirements for the vehicle procurement, or
- The recipient is satisfied that the rolling stock to be purchased meets the Buy America requirements after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—
 - Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and

¹⁰ See 49 CFR § 663.25 and 49 CFR § 661.12.

- The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.¹¹

This subsection describes the **Pre-Award Buy America Certification** requirements and recommends best practices to facilitate compliance with the pre-award audit requirements.

2.2.1 Recipient's Pre-Award Certification of an Applicable Buy America Waiver

By statute, the procurement of rolling stock is subject to a waiver from the requirement that manufactured goods must contain 100 percent domestic content. Section 5323(j)(2)(C) allows FTA to waive Buy America requirements for rolling stock procurements by permitting domestic content less than 100 percent.¹² The Buy America statute also includes three additional waivers: public interest waivers; non-availability waivers; and price differential waivers.¹³ The procedures for each of these statutory waivers are set forth in 49 CFR § 661.7. Only waivers based on public interest or non-availability may be granted for a component or subcomponent in the case of the procurement of rolling stock.¹⁴

Generally, recipients, not the manufacturer, must apply for the Buy America waiver.¹⁵ However, a potential bidder, offeror or supplier may seek a public interest or non-availability waiver for a component or subcomponent.¹⁶ Waiver requests must be made before contract award and the process for obtaining a waiver is time-consuming. Therefore, recipients or manufacturers or suppliers who wish to seek a waiver from FTA are encouraged to apply for the waiver as early as possible in the procurement process.

2.2.2 Documentation for Pre-Award Buy America Certification (Pre-Award Audit Report)

A recipient's Pre-Award Audit Report will summarize the process the recipient has used to verify the proposed manufacturer's compliance with the Buy America requirements.

The recipient must maintain a file for FTA review that includes the following documentation:

¹¹ 49 CFR § 663.25.

¹² 49 USC § 5323(j)(2)(C).

¹³ 49 U.S.C. § 5323(j)(2)(A), (B), and (D).

¹⁴ See 49 CFR § 661.7(f).

¹⁵ 49 CFR § 661.9(c).

¹⁶ 49 CFR § 661.9(d).

- A copy of the Pre-Award Audit Report;
- The recipient's Pre-Award Buy America Certification;
- The manufacturer's certificate of compliance or non-compliance with Buy America rolling stock requirements (see Appendices B.1 and B.2 for certification templates);
- The pre-award purchaser's requirements certification;
- The manufacturer's FMVSS certification, if appropriate.

A sample Pre-Award Audit Report is included in Appendix C.I.

The recipient, or an auditor acting on the recipient's behalf, will review the supporting cost documents in order to verify the estimated domestic content, especially if the manufacturer provides such domestic content only as a percentage. Manufacturers may provide estimated domestic content by cost either in dollar figures or as percentages of total materials cost. Therefore, auditors will verify that the manufacturer's pre-award audit documentation supports all costs used in developing the domestic content list (worksheet) and request any additional information necessary in order to verify and certify compliance with Buy America. In the absence of purchase orders or supplier quotes, this verification may be based on, among other things, estimates or other sources used in developing the bid.

Manufacturers may have concerns about recipients' review of cost data. The manufacturer and recipient may agree that the recipient will contract with an external auditor to conduct the manufacturer's Buy America certification review—and assure the manufacturer that the cost data will be kept confidential. Alternatively, a recipient may be able to keep its Buy America audit function independent by using a “firewall” and assuring the manufacturer that those employees of the recipient performing the Buy America audit are prohibited from disclosing any of the manufacturer's proprietary data. Further, the review of documents may occur at the manufacturer's place of business; there is no requirement that the recipient or its auditors obtain copies of the documents; they need simply to review them. Whether conducted by a contractor or the recipient's employees, the manufacturer may require the auditor to sign a non-disclosure agreement prior to reviewing the documents.

2.2.3 Best Practices for Pre-Award Buy America Certifications

This subsection describes best practices to aid recipients, auditors, manufacturers, and suppliers in achieving compliance with the **Pre-Award Buy America Certification** requirements. This subsection includes descriptions of recommended processes and special considerations, beginning with key steps

that recipients may take early in the solicitation process, as well as processes to verify compliance with domestic content and U.S. final assembly requirements.

Throughout the vehicle procurement process recipients should be alert to conditions that could pose challenges for Buy America compliance. Examples of these conditions include:

- Manufacturers who are inexperienced with the U.S. market and regulations;
- A new subcomponent/component supplier;
- Vehicles with the domestic content close to the minimum threshold;
- Components with the domestic content close to the minimum threshold;
- Manufacturers creating new U.S. final assembly facilities;
- Engineering changes, field modifications or contract change orders causing changes in project scope (completed projects must comply with Buy America requirements after all change orders have been implemented for all vehicles).

Recipients may adopt practices to lessen the risks of non-compliance. It is important to clearly define and communicate the recipients' processes and expectations about verifying compliance to manufacturers throughout the procurement and production periods. Another useful tool that recipients may use is intermediate audits (see [Section 3.1.3.4](#) for a discussion of Post-Delivery Domestic Content Monitoring). Some recipients also consider a requirement that vehicles have domestic content percentages even greater than the required domestic content percentage for vehicles and/or components to prevent inadvertent noncompliance with Federal requirements. Further, recipients may provide incentives for bidders to increase domestic content as long as those incentives are consistent with Federal and local law.

The following are some recommended best practices for the pre-award audit stage.

2.2.3.1 Solicitation Phase

As the pre-award audit must be completed prior to the recipient entering into a formal contract with a manufacturer or supplier, there are several steps that the recipient may take during the procurement process to help ensure Buy America compliance.

Table 2.
*Recommended
 Discussion Topics
 during Solicitation
 Phase of Procurement*

Buy America requirements, e.g., domestic content requirements, supply chain implications, manufacturer's certification, etc.
Recipient & Manufacturer or Supplier's (Bidder or Offeror) monitoring responsibilities of the status of compliance during production (e.g., the Resident Inspector program).
Recipient's processes for conducting Pre-Award, Intermediate and Post-Delivery Audit reviews.
Manufacturer's procedures for collecting, reviewing, and maintaining supporting documentation.
Recipient's procedures and requirements for collecting, reviewing, and maintaining supporting documentation.
Recipient's procedures for managing requests for waivers from Buy America requirements.
Recipient's process for selecting a Buy America auditor.

A pre-proposal conference is a good opportunity for recipients to highlight important Buy America requirements and identify specific Buy America related documentation that manufacturers will be expected to include in their bids or produce at the pre-award audit phase. For example, recipients may want to emphasize that in a competitive sealed procurement, a bidder must submit a signed certification with the bid. If a bidder submits the wrong certification, or certifies both compliance and non-compliance, the bid generally will be deemed non-responsive.¹⁷

Also during the solicitation period, recipients will communicate to manufacturers their expectations for periodic status reporting on Buy America compliance from the manufacturer(s), including if there are any changes to Buy America content or final assembly that may occur during vehicle production due to modifications or substitutes of component or subcomponent suppliers. Periodic reporting helps prevent post-delivery surprises in changes in domestic content and potential issues regarding compliance. For reference, a Proposal Compliance Checklist can be found in [Appendix A.I.](#)

2.2.3.2 Verifying Domestic Content Compliance

Preparing and verifying domestic content compliance is a key element of the pre-award audit process. Errors and misinterpretations during the calculation process can undermine the overall domestic content percentage and jeopardize the vehicle's compliance with Buy America requirements. Please see Section 4, Domestic Content Calculations, for detailed instructions on calculating domestic content.

While conducting a pre-award audit, auditors should pay close attention to components with the highest dollar or percentage values. The impact on the vehicle's overall domestic content may be impacted significantly if a high-dollar component is no longer considered to be of domestic origin under 49 CFR § 661.11(g). Section 661.11(g) provides that a component may be considered

¹⁷ 49 CFR § 661.13(b).

of domestic origin, if “more than 60 percent of the subcomponents of that component, by cost, must be of domestic origin, and the manufacture of the component must take place in the United States. If, under the terms of this part, a component is determined to be of domestic origin, its entire cost may be used in calculating the cost of domestic content of an end product.”¹⁸ If a component’s domestic content falls below the minimum threshold at any point during the production cycle, it could reduce the vehicle’s domestic content percentage and potentially cause the entire vehicle to fall out of compliance. Therefore, components with domestic content percentages that are close to the minimum domestic content threshold should be noted and followed up with during and at the end of the production cycle.

Similarly, when reviewing the manufacturer’s pre-award documentation, auditors should pay particular attention to vehicles that are expected to have a total domestic content that is close to the minimum domestic content threshold. Subsequent change orders or errors in the calculations or documentation (even to smaller value components) could potentially alter the total domestic content and result in noncompliance.

Finally, auditors should confirm that labor costs for final assembly are not included in the domestic content by cost calculations.¹⁹

2.2.3.3 Verifying U.S. Final Assembly

Another essential step in the pre-award audit process is to verify that the proposed procurement would comply with the U.S. final assembly requirements. In order to verify that the proposed final assembly activities comply with Buy America requirements, the recipient must review documentation provided by the manufacturer to determine whether the manufacturer’s planned final assembly activities in the United States are adequate to meet the requirements of 49 CFR § 661.11 and Appendix D to § 661.11 (required documentation is discussed in [Section 2.2.2](#)).

The specific scope of final assembly activities may vary from manufacturer to manufacturer and even from vehicle to vehicle. Therefore, in order to verify compliance, the auditor may perform due diligence through a variety of methods, including, among other things, reviewing:

- The manufacturer’s flow chart(s) or detailed drawing(s) of the production work station;
- The manufacturer’s work instructions;

¹⁸ Note that under the September 1, 2016 FTA Policy Guidance, increase in the required domestic content (i.e., more than 65% or 70%), requires a similar increase in domestic content under 49 CFR § 661.11(g).

¹⁹ 49 CFR § 661.11(p).

- The manufacturing plans;
- The assembly drawings (usually kept or posted on a production (shop) floor).

Final assembly costs include the proposed direct labor associated with the U.S. final assembly production line. For the pre-award audit, costs may be established from the manufacturer's estimate of hours, subcontractors' labor quotes, and actual costs from similar projects. Auditors must collect as much information as needed to determine whether the final assembly costs reflect the minimum requirements for final assembly as described in Appendix D to 49 CFR § 661.11.

2.2.3.4 Supplier Buy America Certificate at Pre-Award

The manufacturer is responsible for ensuring that suppliers and subcontractors comply with Buy America requirements. At the pre-award audit state, manufacturers will need to demonstrate their process for verifying suppliers' compliance with Buy America. This may take the form of obtaining certifications and other documentation or information from suppliers.²⁰ A suggested template that captures relevant information is discussed in [Section 4.5](#) and a sample is provided in [Appendix B.6](#), "Sample Supplier Buy America Certification."

In order to certify compliance, manufacturers and suppliers must be knowledgeable about the correct method of calculating a component's percentage of domestic content. Section 4, "Domestic Content Calculations," provides detailed instructions for calculating domestic content.

2.3 Pre-Award Purchaser's Requirements Certification

A recipient of FTA financial assistance purchasing revenue service vehicles must certify pre- award that:

1. The rolling stock it is purchasing is the same product described in its solicitation specification; and
2. The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification (Purchaser's Requirements).²¹

A sample **Pre-Award Purchaser's Requirements Certification** is provided in [Appendix B.5](#). This certification must be retained by the recipient and available for FTA inspection.

²⁰ While not required, to verify compliance with the pre-award audit and Buy America requirements, the manufacturer may consider conducting supplier qualification reviews (e.g., via site visits), detailed reviews of supplier documents, first article inspections, qualification testing, and source/pre-shipment inspections to verify suppliers' certifications.

²¹ 49 CFR § 663.27.

2.3.1 Best Practices for Purchaser's Requirements Certification at Pre-Award

Verification of the information required in the **Pre-Award Purchaser's Requirements Certification** typically is conducted by the recipient's procurement office and the technical evaluation team before contract award.

To verify that the proposed manufacturer's bid complies with the recipient's specification, the recipient will compare the solicitation specification for the vehicle with the proposed manufacturer's technical bid. A manufacturer's technical information can include documentation submitted with the manufacturer's bid proposal, including, but not limited to, specifications, product brochures, technical data sheets, bills of material, drawings, etc.

Recipients also need to assess a proposed manufacturer's capacity and capability to produce the specific vehicles. The scope and depth of the assessment will vary depending on the size and complexity of the procurement and the past performance of the manufacturer. The solicitation should include requirements that bidders provide information about their manufacturing capacity and capability to produce the specified vehicles. This information may include the following:

- Past performance on previous vehicle orders;
- Qualifications of key personnel;
- Facility layouts/drawings, production line layout/flowchart;
- Plant output capacity (i.e., max. production rate per week);
- Staffing counts by craft;
- Readiness of fixtures for carbody construction;
- Quality assurance and control plan; and
- Other items necessary to execute the work.

Additionally, recipients should verify a manufacturer's financial viability as part of the review to certify compliance with the pre-award purchaser's requirements. At a minimum, recipients should review the proposed manufacturer's public financial statements (if available).

2.4 Pre-Award Federal Motor Vehicle Safety Standards (FMVSS) Certification of Compliance or Inapplicability

The **Pre-Award FMVSS Certification** is a requirement for most, if not all, motor vehicle procurements. The National Highway Traffic Safety Administration (NHTSA) has a legislative mandate under title 49 U.S.C., chapter 301, Motor Vehicle Safety, to issue FMVSS regulations. The term “motor vehicle” is defined for the purpose of the statute and regulations that NHTSA administers as “a vehicle that is driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.”²² These Federal safety standards are the minimum safety performance requirements for motor vehicles.

Recipients purchasing motor vehicles, such as buses, **must** keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer’s self- certification information that the vehicle complies with the relevant FMVSS or a copy of the manufacturer’s self- certification that the vehicle is not subject to the FMVSS.²³ (See Appendix and B.7 for sample certifications.)

²² See 49 U.S.C. § 30102(a)(7).

²³ 49 CFR §§ 663.41, 663.43(a).

SECTION
3

Post-Delivery Audit

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit under this part is complete before title to the rolling stock is transferred to the recipient, or before the rolling stock is put into service, whichever is first. *49 CFR § 663.31 and § 663.5(b).*

This section describes the processes, certifications, and documentation required to validate the post-delivery audit. Appendix A.3 provides useful post-delivery checklists.

This section also provides best practices to assist in complying with the regulations.

The post-delivery audit is similar to the pre-award audit and follows the same multi-step process as the pre-award audit described in Section 2. In the post-delivery audit, however, recipients verify that the manufacturer complied with applicable Buy America requirements in the production of the rolling stock and this verification therefore must be based on actual data rather than plans and proposals. The conclusions of this review are captured in a Post-Delivery Audit Report.

Recipients continue to have the ultimate responsibility for ensuring compliance with all Federal requirements, post-delivery. As discussed in Section 2, Buy America requirements flow down from the FTA recipients to the manufacturers through the contract documents.

In turn, the manufacturer has the responsibility to document the domestic content and the responsibility to maintain documentation that demonstrates compliance with Buy America regulations.²⁴

Post-delivery, a manufacturer certifies that the requirements of the Buy America provisions were satisfied for the total vehicle(s) and all of its components, which includes collecting and evaluating suppliers' documentation. The manufacturer will ensure that any **Supplier Buy America Certificates** (See Appendix B.6) are valid and can provide to auditors the supplier information necessary to demonstrate compliance.

²⁴ 49 CFR § 661.15(d).

Because all parties have a responsibility to ensure compliance by verifying domestic content percentages and domestic manufacturing locations, manufacturers will communicate Buy America requirements to their component suppliers and expect suppliers to perform due diligence of their subcomponent suppliers.

3.1 Requirements for Post-Delivery Audit

The post-delivery audit period is 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.”²⁵ As in the pre- award phase, recipients may perform the audit processes, or use third-party auditors to perform the review functions on the recipients’ behalf.

The purpose of the post-delivery audit is for recipients to verify that the built vehicle(s) comply with Buy America requirements, meet the recipient’s solicitation specification requirements, and if applicable, FMVSS.

Recipients must maintain contract files for the post-delivery phase that include certifications and supporting documentation. The required certifications are:

- Post-Delivery Buy America Certification;
- Post-Delivery Purchaser’s Requirements Certification (based upon a review of the Resident Inspector’s Report);
- Post-Delivery Certification of FMVSS Compliance or Inapplicability, when appropriate.

The findings of the post-delivery audit process must be described in the Post-Delivery Audit Report.

3.1.1 Post-Delivery Buy America Certification Requirements

A review for the **Post-Delivery Buy America Certification** must be completed before the vehicle title is transferred to the recipient or before the rolling stock is placed in revenue service, whichever comes first.

A recipient’s Post-Delivery Buy America Certification certifies either that the recipient:

- Obtained a letter from FTA granting a waiver from Buy America requirements for the vehicle procurement; or
- Confirmed, on the basis of an audit prepared by someone other than the manufacturer or the manufacturer’s agent, that:

²⁵ 49 CFR § 663.5(b).

- The vehicle(s) contain components that meet or exceed the required percentage of domestic content, by cost;
- Final assembly of the vehicles took place in the U.S.; and
- Final assembly activities were compliant with Buy America requirements.

The review period begins when the rolling stock is delivered to the recipient and ends before the title transfer or before the rolling stock is placed in revenue service, whichever comes first. If a waiver was not requested, or the request was denied, the auditor will verify that the manufacturer has provided enough detail in its documentation to demonstrate that FTA's Buy America requirements have been met.

The recipient must confirm that the manufacturer has complied with U.S. final assembly requirements and that the cost of components and subcomponents is greater than the required domestic content percentage of the aggregate cost for all components. If the manufacturer does not provide sufficient information, the recipient must seek additional information.

- Buy America-Exempt Rolling Stock Vehicles – if a vehicle is eligible for a waiver, the recipient must:
 - Obtain a Buy America waiver letter from FTA before a contract is awarded;
 - Complete a Post-Delivery Buy America Certificate of Non-Compliance (see Appendix B.9 for sample certification); and
 - Keep the Pre-Award Buy America Certificate of Non-Compliance on file for future FTA reviews.

3.1.2 Documentation for Post-Delivery Buy America Certification

A recipient's Post-Delivery Audit Report summarizes the process the recipient used to verify the manufacturer's compliance with the Buy America requirements.

At the conclusion of the audit, the recipient must maintain a file for FTA reviews that includes:

- A copy of the Post-Delivery Audit Report;
- The recipient's Post-Delivery Buy America Certificate;
- The post-delivery purchaser's requirement certification;
- A manufacturer's FMVSS certification, when appropriate;
- The manufacturer's certificate of compliance or non-compliance with Buy America rolling stock requirements.

A sample Post-Delivery Audit Report is included in Appendix C.2.

The manufacturer provides the following documents for the **Post-Delivery Buy America Certification**:

- A detailed list of components and subcomponents which includes the manufacturer/supplier and country of origin;
- Cost of each component and corresponding subcomponents;
- Both domestic and foreign content, in dollars or as a percentage;
- The final assembly location;
- Description of all work performed at the final assembly location; and
- Cost of the work performed at the final assembly location.

Although the manufacturer can provide its domestic content worksheet in terms of percentages rather than dollars, the recipient or its auditor needs to review supporting actual cost documents in order to verify compliance. The manufacturer must be able to support all the costs depicted in the domestic content worksheet and final assembly scope of work. The Post-Delivery Audit Report should not include confidential data provided to the recipient or an auditor but should summarize the data reviewed to support the conclusions in the report.

Manufacturers may have concerns about recipients' review of cost data. The manufacturer and recipient may agree that the recipient will contract with an external auditor to conduct the manufacturer's Buy America certification review—and assure the manufacturer that the cost data will be kept confidential. Alternatively, a recipient may be able to keep its Buy America audit function independent by using a “firewall” and assuring the manufacturer that those employees of the recipient performing the Buy America audit are prohibited from disclosing any of the manufacturer's proprietary data. Further, the review of documents may occur at the manufacturer's place of business. There is no requirement that the recipient or its auditors obtain copies of the documents they review. Whether conducted by a contractor or the recipient's employees, the manufacturer may require the reviewer to sign a non-disclosure agreement prior to reviewing the documents.

3.1.3 Additional Information for Post-Delivery Buy America Certifications

This subsection provides guidance to assist recipients, auditors, manufacturers, and suppliers in achieving compliance with the post-delivery certification requirements.

3.1.3.1 Verifying Domestic Content

As discussed for the pre-award audit, preparing and verifying domestic content compliance is fundamental to the audit process. Recipients will review and verify the stated domestic content, by cost; and verify that the final assembly location and costs confirm that the minimum activities for final assembly are performed in the U.S.

Auditors will obtain current information on the cost of components and subcomponents from manufacturers, as illustrated in Section 4. The manufacturers' worksheets will note any changes in component suppliers and component percent domestic content, by cost.

Auditors may validate manufacturers' worksheets by reviewing paid invoices, purchase orders, or other source documents. Auditors may link the costs presented by the manufacturer to the specific source documents. Some auditors find it useful to add a column to the domestic content worksheet and track costs associated with specific paid invoices or purchase orders so they can more easily monitor changes over time.

Auditors will verify that the manufacturer is accounting for all components in its domestic content calculation and that all components and subcomponents are properly classified. See [Section 4.2.1](#), "Component/Subcomponent," for further discussion on classifying components and determining their classification as being of domestic or foreign origin.

3.1.3.2 Components with Domestic Content Percentages Close to the Minimum Threshold

During a post-delivery audit, auditors should direct specific attention to components with the highest dollar (or percentage) values as well as to components with domestic content percentages close to the minimum threshold. Similarly, auditors should also pay particular attention to vehicles with total domestic content that is very near the minimum threshold. Change orders and errors (even to smaller value components) could potentially slip the total domestic content percentage below the requirements.

As discussed in Section 2, Pre-Award Audit, auditors may also need to examine component suppliers to evaluate whether or not the suppliers have satisfied Buy America requirements.

3.1.3.3 Reasonableness of Component and Subcomponent Costs

Auditors should compare costs for components and subcomponents listed on the manufacturers' domestic content worksheet to comparable vehicle

procurement costs. The purpose of this comparison is to check that the manufacturers' domestic content worksheet appropriately depicts costs, so that component costs are not under- or over-valued in an effort to meet the domestic content requirement for rolling stock procurements. Please see Section 4 for more information on domestic content calculations.

3.1.3.4 Verification of U.S. Final Assembly

In order to verify that final assembly activities comply with Buy America requirements, recipients must review documentation provided by the manufacturer that demonstrates:

- That the final assembly site is located in the U.S.;
- That the final assembly activities meet the minimum requirements listed in Appendix D to 49 CFR § 661.11; and
- The total cost of final assembly, including labor and overhead costs.

Appendix D to 49 CFR § 661.11 provides the minimum requirements for final assembly of vehicles that manufacturers must meet to comply with Buy America regulations. The manufacturer's documentation will provide enough detail to allow a recipient to determine that its final assembly activities would constitute adequate final assembly under Buy America requirements.

The scope of final assembly activities may vary from manufacturer to manufacturer and even from vehicle to vehicle. During a post-delivery audit, auditors will review the manufacturer's activities and verify that the manufacturer performed the final assembly activities in the U.S. This may be accomplished by reviewing the Resident Inspector Report, when such a report is required.

An auditor may verify compliance through a variety of methods at the post-delivery stage, including, but not limited to:

- Reviewing the manufacturer's flow chart(s) of the production work station;
- Work instructions;
- QC/QA inspections (hold points);
- Manufacturing plans; and
- Assembly drawings (as would be kept or posted on a shop floor).

In the event an on-site inspector is not required by 49 CFR § 663.37, recipients will consider whether auditor(s) should make on-site visits to verify final assembly activities. Site visits may be merited if a final assembly facility is new or if there are concerns about the manufacturer's capacity.

If a recipient determines that a manufacturer's final assembly processes do not include all the activities that are typically considered the minimum requirements,

it can request an FTA determination of compliance. FTA will review these requests on a case-by-case basis to determine compliance with Buy America.

Buy America regulations also require that the manufacturer provide the cost of U.S. final assembly. While reviewing a manufacturer's final assembly documentation, auditors consider the following:

- Whether the manufacturer has provided sufficient documentation for the cost of final assembly; and
- Whether the manufacturer's actual total cost for final assembly includes all costs consistent with the minimum requirements for final assembly contained in Appendix D to 49 CFR 661.11.

If necessary, auditors should obtain a breakdown of the labor hours and hourly rates by craft (or a composite rate based on the ratio of the associated skill sets and supervisory personnel). The auditor should verify that the information the manufacturer provided is commensurate with the labor actually employed for the final assembly activity.

3.1.3.5 Supplier Buy America Certificate Documentation for Buy America Certification at Post-Delivery

The manufacturer is responsible for ensuring that suppliers and subcontractors comply with Buy America requirements. Suppliers must provide sufficient documentation to manufacturers that demonstrates compliance with post-delivery audit requirements.

It also is recommended, but not required, that manufacturers obtain executed (signed and dated) certifications from all their suppliers for the post-delivery audit. A suggested template that captures the relevant information is provided in Appendix B.6, "Sample Supplier Buy America Certification."

In order to certify compliance, manufacturers and suppliers must be knowledgeable about the correct method of calculating a component's percentage of domestic content. Section 4, "Domestic Content Calculations," provides detailed instructions for calculating domestic content.

Manufacturers will conduct due diligence when documenting the location of a supplier's manufacturing facility for each component (and ideally for each subcomponent). Manufacturers may perform supplier qualifications, which include site visits, detailed reviews of supplier documents, first article inspections, qualification testing, and source/pre-shipment inspection to verify suppliers' certifications. Component suppliers executing the certificate have additional responsibility to verify that subcomponents conform to specified standards.

3.1.3.6 *Post-Delivery Domestic Content Monitoring*

Post-Delivery Domestic Content Monitoring, or intermediate review, is a recommended best practice that occurs after the vehicle manufacturer delivers the first vehicle to the recipient and 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 will complete the Post-Delivery Audit as described in 49 CFR § 663.5(f) and 49 CFR § 663.33 on the first vehicle delivered.

The resident inspector, or an agent or employee of the recipient, would perform the Post-Delivery Domestic Content Monitoring. The purpose of the Post-Delivery Domestic Content Monitoring is to ensure that all vehicles after the first vehicle are compliant with the regulations.

The personnel performing the Post-Delivery Domestic Content Monitoring 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) would perform an evaluation to determine if the domestic content of the vehicles has changed. If the domestic content is below the minimum requirement, then the recipient should notify the manufacturer of non-compliance and require the manufacturer to comply with Buy America. If the manufacturer is unable or unwilling to comply with Buy America on the production vehicles, the recipient should contact its Regional Office regarding the non-compliance.

3.2 **Post-Delivery Purchaser's Requirements Certification – 49 CFR § 663.37**

This subsection describes the process that recipients will follow in order to demonstrate compliance with the **Post-Delivery Purchaser's Requirements Certification** in 49 CFR § 663.37.

The **Post-Delivery Purchaser's Requirements Certification** certifies that the delivered vehicles meet the contract specifications, based on the recipient's visual inspections, road tests, monitoring of the final assembly process and the Resident Inspector's Report of manufacturing activities.

The intent of the **Post-Delivery Purchaser's Requirements Certification** is to safeguard recipients by ensuring that the delivered vehicles comply with contract specifications.

3.2.1 Post-Delivery Purchaser's Requirements Certification Requirements

Recipients must keep a **Post-Delivery Purchaser's Requirements Certification** on file that certifies:

- When required by 49 CFR § 663.37, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture and completed a report on the manufacture of the vehicles; and
- After reviewing the Resident Inspector's Report, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.

With certain exceptions described below, recipients are required to have an on-site resident inspector at the manufacturing site throughout the manufacturing period. The resident inspector must:

- Remain full-time at, or periodically visit, the final assembly location during the period of manufacture; and
- Visually inspect, participate in, and witness performance tests of the vehicles.

Further, the resident inspector may visit component manufacturing sites, as necessary, during the period of manufacture of the rolling stock.

The resident inspector must prepare the Resident Inspector's Report that, at a minimum, provides:

- Accurate records of all vehicle construction activities (e.g., component manufacturing processes, final assembly activities, and collected quality control data); and
- A summary of how the construction and operation of the vehicles meet (or do not meet) the contract specifications. The report will reference the above cited manufacturing processes, final assembly activities, and quality control data.

It is the recipient's responsibility to verify that the vehicles comply with the contract specifications and to identify areas of noncompliance. The purpose of the Resident Inspector's Report is to assist the recipient in verifying that the vehicles meet the contract specifications.

Upon delivery of the vehicles and following receipt and review of the Resident Inspector's Report, the recipient must visually inspect and road test the vehicles to ensure the vehicles meet the contract specifications.

Exceptions for on-site resident inspector. An on-site resident inspector is **not** required for (1) procurements of 10 or fewer buses; or (2) procurements of 20 or fewer vehicles serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) procurements of any number of primary manufacturer standard production and unmodified vans. 49 CFR § 663.37. For such procurements, only visual inspection and road testing upon delivery to the recipient are required to certify compliance with the contract specifications.

3.2.2 Required Purchaser's Requirements Documentation at Post-Delivery

Once the recipient has reviewed the Resident Inspector's Report, successfully inspected and tested the delivered vehicles, and is satisfied the Purchaser's Requirements have been met, the recipient will then:

- Complete a **Post-Delivery Purchaser's Requirements Certification** (see Appendices B.10 and B.11 for sample certifications).

Recipients must maintain a file for future FTA reviews that includes:

- The Post-Delivery Purchaser's Requirements Certification;
- A copy of the Resident Inspector's Report and any associated supporting documentation
- The solicitation specification;
- The manufacturer's bid specification;
- Authorizations of approved equals; and
- Any other supporting documentation.

3.2.3 Best Practices for Purchaser's Requirements Certification at Post-Delivery

While various approaches can be used to verify and document compliance for the **Post-Delivery Purchaser's Requirements Certification**, the following best practices are presented to assist recipients.

3.2.3.1 *Assignment of Resident Inspector to Manufacturing/Final Assembly Site*

The intent of the regulation is to help recipients verify that the vehicles will comply with its contract specifications. It is not meant to require that a resident inspector remain "full-time" at the manufacturer's site throughout the period of manufacture. Although this may be recommended for some vehicle

procurements, the resident inspector requirements may be fulfilled with periodic visits.

3.2.3.2. Resident Inspector's Report for Purchaser's Requirements at Post-Delivery

As previously mentioned, the Resident Inspector's Report includes, at a minimum, accurate records of all vehicle construction activities (e.g., component manufacturing processes, final assembly activities, and collected quality control data) and a description of how the construction and operation of the vehicles meet (or do not meet) the contract specifications. Manufacturers will provide the necessary documentation to complete the review.

As a best practice, the Resident Inspector's Report and supporting documentation may include:

- A summary of the Resident Inspector's Report describing the scope of work performed on behalf of the recipient. The report would identify all activities that verify that the vehicle(s) comply with the contract specifications, and would include inspection qualification, and production testing.
- Recipient's independent inspections, in addition to the manufacturer's quality control (QC). This may be demonstrated by signed inspection reports (usually by hold point inspections where the manufacturer cannot proceed with work until the resident inspector's approval is obtained).
- The vehicle history books provided by the manufacturer and reviewed by the resident inspector prior to authorization for shipment of the vehicle(s). The resident inspector would briefly summarize the content of the vehicle history books provided by the manufacturer and include samples or excerpts that demonstrate accurate record of vehicle construction activities and adherence to quality control processes.
- Sample(s) of the Authorization-for-Shipment forms. The forms would include a sign-off signature by the resident inspector for each vehicle. The forms would list any open action items at the time of shipment.
- A summary describing how the manufacturer adequately implemented its QC processes throughout the manufacturing process. The summary would also address how the manufacturer adhered to appropriate FTA elements of quality.²⁶ For example, a sample Closed Nonconformance Report would be included that identifies any corrective rework/repairs that were made and approved by the recipient or its designated representative. Note that nonconforming material that was repaired (that is, not fully conforming to OEM/specification requirements), or that is permitted to be used "as is" must be approved by the recipient.

²⁶ See FTA Quality Management System Guidelines, <https://www.transit.dot.gov/funding/procurement/project-management-oversight-pmo>.

- Verification that the manufacturer has maintained complete records of construction for each vehicle. These documents (typically called car files) would likely contain details beyond the scope of the Resident Inspector's Report such as all of the manufacturer's quality control (QC) inspections.
- Evidence that delivered vehicles have been inspected and road tested to confirm they meet contract specifications. The report would include a summary list of static, dynamic, and performance tests performed on each vehicle. A sample of key test report results that show sign-offs for completed tests, failed tests, and any corrective action will also be included. This summary list of test results would be compared to the contract specifications to validate that the vehicles meet (or do not meet) contract specifications. Any elements that do not meet specification requirements must be accompanied by a contract modification approved by the recipient and identified in the Resident Inspector's Report summary.

3.3 Post-Delivery Federal Motor Vehicle Safety Standards (FMVSS) Certification of Compliance and Inapplicability

Recipients purchasing motor vehicles must demonstrate that the vehicles comply with FMVSS as part of the requirement for the post-delivery audit. The recipient must keep on file the certification that it received a copy of the manufacturer's self-certification information that the vehicle complies with FMVSS.²⁷

For FMVSS compliant motor vehicles, the recipient must:

- Obtain the FMVSS self-certification sticker information from the motor vehicle manufacturer;

Confirm the manufacturer's FMVSS sticker is affixed to each motor vehicle. [The sticker is usually located in the interior front curbside of the motor vehicle (see Appendix B.15–B.19 for sample FMVSS stickers)]; and

- Complete a **Post-Delivery FMVSS Compliance Certification** (see Appendix B.12 for a sample certification).

The recipient must keep the manufacturer's Post-Delivery FMVSS self-certification information with the FMVSS Compliance Certification in its file.

There are instances when motor vehicles are not subject to FMVSS. Consider, for example, 49 CFR § 571.7 (Applicability of FMVSS Regulation) and 49 CFR part 555 (Temporary Exemptions from Motor Vehicle Safety Standards). In such cases, recipients must keep on file certification that the contracted motor vehicles are not subject to FMVSS.²⁸

²⁷ 49 CFR § 663.41.

²⁸ 49 CFR § 663.43.

If the contracted motor vehicles are not subject to FMVSS, the recipient must:

- Obtain the manufacturer's certified statement indicating that the contracted motor vehicles are not subject to FMVSS;
- Complete a **Post-Delivery Certification of FMVSS Inapplicability** (see Appendix B.14 for a sample certification).

The recipient must keep the manufacturer's Post-Delivery FMVSS exemption statement with the Pre-Award Certification of FMVSS Inapplicability in its file.

Domestic Content Calculations

This section provides guidance and clarification on how to calculate domestic content correctly. It clarifies the distinctions in the treatment of domestic content for components and subcomponents and offers clarification on how to determine what is a component versus what is a subcomponent for rolling stock. The intent is to assist recipients in the verification and validation of domestic content calculations to verify compliance with the Buy America requirements.

In order to verify compliance with Buy America's domestic content requirements, the recipient will need to undertake an analysis that accounts for the costs of all components and subcomponents, both foreign and domestic, consistent with 49 CFR § 661.11 and subcomponents. The Domestic Content Calculation must demonstrate compliance with the requirement that the cost of components and subcomponents produced in the United States equals or exceeds the required minimum percentage of the cost of all components and subcomponents.²⁹ [Section 4.3.1](#) provides guidance to calculate the Vehicle Material Total Cost, which is the summation of all component costs and is the proper value that must be used in calculating the percentage of domestic content of the vehicle consistent with 49 CFR § 661.11.

FTA has observed that some recipients and vendors, or their agents or auditors, are calculating the domestic content amount by dividing the total costs of the domestic components by the estimated value of the vehicle, found by subtracting certain costs from the Contract Total Price of the vehicle. This calculation is not consistent with 49 CFR § 661.11 and fails to demonstrate compliance.

4.1 Vehicle Level Domestic Content Calculations

Calculation of the domestic content is conducted at two levels: the vehicle level, and the component level. Each is somewhat different in nature.

- a) At the vehicle level – The rolling stock manufacturer must demonstrate that the cost of components produced in the U.S. is equal to or more than the required minimum percentage of the cost of all components on the vehicle.³⁰ The recipient must verify the manufacturer's information.

²⁹ 49 U.S.C. 5323(j)(2).

³⁰ 49 U.S.C. § 5323(j)(2).

- b) At the component level – For a component to be of domestic origin, more than 60 percent³¹ of its subcomponents, by cost, must be manufactured in the United States, and the manufacture of the component must occur in the U.S.³² If the component is deemed to be of domestic origin, then the manufacturer receives credit for the entire cost of the component (including the foreign subcomponents). If a component contains less than the minimum domestic content percentage, i.e., is of foreign origin, then the manufacturer only receives domestic credit for those subcomponents manufactured in the U.S.

4.2 Domestic Content – Relevant Definitions

For vehicle components to be considered domestic, the subcomponents, by cost, must be the required minimum percentage of domestic origin, and manufacturing must occur in the U.S. Therefore, when evaluating domestic content, it is important to have a full understanding of **the manufacturer of the component, its country of origin, and the percent cost of its subcomponents** relative to the cost of the component.

4.2.1 Component/Subcomponent

A component, as defined in 49 CFR § 661.11(c), is any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an end product at the final assembly location. A component may be manufactured at the final assembly location if the manufacturing process to produce the component is an activity separate and distinct from the final assembly of the end product.³³ Typical components of buses and rail rolling stock are listed in Appendices B and C to 49 CFR § 661.11; these illustrative lists are not intended to be exhaustive. Also, 49 CFR § 661.11(t), (u), and (v) list specific components that make-up train control (t), communication equipment (u), and traction power equipment (v).

For a component to be of domestic origin, more than 60 percent of the subcomponents of that component, by cost, must be of domestic origin, and the manufacture of the component must take place in the United States.³⁴ Under FTA's September 1, 2016 policy guidance implementing the increased domestic content included in the FAST Act, the requirement for domestic subcomponents will increase accordingly. Therefore, if the domestic content for the vehicle is more than 65 percent, then a component must contain more than 65 percent

³¹ As the domestic content percentage increases in FY 2018 and FY 2020, the minimum domestic content of subcomponents will also increase, to more than 65 percent in FY 2018 and more than 70 percent in FY 2020.

³² 49 CFR § 661.11(g).

³³ See 49 CFR § 661.11(d).

³⁴ 49 CFR § 661.11(g).

of domestic subcomponents. If a component is determined to be domestic, its entire cost may be used in calculating the cost of domestic content of the vehicle.³⁵ If a component is determined to be foreign, only the cost of U.S. manufactured subcomponents, if any, may be used in calculating the cost of domestic content of the vehicle.

In contrast, a subcomponent is any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component in the manufacturing process and that is incorporated directly into a component. 49 CFR § 661.11(f). A subcomponent need only be manufactured in the U.S. to be considered domestic. 49 CFR § 661.11(h). If a subcomponent manufactured in the U.S. is exported for inclusion in a component that is manufactured outside the U.S. and it receives tariff exemptions under the procedures set forth in 19 CFR 10.11 through 10.24, the subcomponent retains its domestic identity and can be included in the calculation of the domestic content of an end product even if such a subcomponent represents less than 60 percent of the cost of a particular component. 49 CFR § 661.11(i)

If a subcomponent manufactured in the United States is exported for inclusion in a component manufactured outside the United States and it does not receive tariff exemption under the procedures set forth in 19 CFR 10.11 through 10.24, the subcomponent loses its domestic identity and cannot be included in the calculation of the domestic content of an end product. 49 CFR § 661.11(j)

Finally, except as provided in 49 U.S.C. § 5323(j)(5), raw materials produced in the United States and then exported for incorporation into a component are not considered to be a subcomponent for the purpose of calculating domestic content. 49 CFR § 661.11(k). The value of such raw materials is to be included in the cost of the foreign component.

4.2.2 Lists of Typical Components

The manufacturer's list of typical components for rail rolling stock is in Appendix C to 49 CFR part § 661.11, and includes:

- car shells
- engines
- main transformer
- pantographs
- traction motors
- propulsion gear boxes
- interior linings
- acceleration and braking resistors

³⁵ See 49 CFR § 661.11(g).

- propulsion controls
- low voltage auxiliary power supplies
- air conditioning equipment
- air brake compressors
- journal bearings
- axles
- 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 and draft gear trucks
- diagnostic equipment
- third rail pick-up equipment

The manufacturer's typical list of components for buses is in Appendix B to 49 CFR part § 661.11:

- 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
- interior trim, flooring, and floor coverings

At a minimum, the items listed in Appendices B and C of 49 CFR § 661.11 are components for domestic content calculation purposes. If there are new technologies that supersede the items in Appendices B and C of 49 CFR § 661.11, these should be reviewed to verify that the component/subcomponent designations applied for that project are consistent with the regulations. If there is any question of compliance, recipients should consult with FTA.

4.2.3 Calculating Costs of Components and Subcomponents

The domestic content calculation is based on **costs**, not the contract price. The total cost of all components of the rolling stock will not be a number that can be derived from the bidder’s bid price or final contract price.

As part of the pre-award and post-delivery audit requirements, the recipient must certify that it “is satisfied that the rolling stock to be purchased” (pre-award audit) or “received” (post-delivery) “meets the requirements of [49 U.S.C. § 5323(j)(2)(C)] after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer,” which lists:

Pre-Award Audit Documentation	Post-Delivery Audit Documentation
(1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin, and costs; and (2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.	(1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin, and costs; and (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.

The methodology for calculating the costs of components and subcomponents is set forth in FTA's Buy America regulation at 49 CFR § 661.11. Both manufacturers and Buy America auditors need to understand section 661.11 in order to calculate domestic content for rolling stock.

Rolling stock will include components and subcomponents from one of two sources: (1) outside suppliers; or (2) the bidder. Section § 661.11(m) sets forth the basic methodology for calculating costs for components or subcomponents received from suppliers or manufactured by the bidder:

- 1) The cost of a component or a subcomponent is the price that a bidder or offeror must pay to a subcontractor or supplier for that component or subcomponent. Transportation costs to the final assembly location must be included in calculating the cost of foreign components and subcomponents.
- 2) If a component or subcomponent is manufactured by the bidder or offeror, the cost of the component is the cost of labor and materials incorporated into the component or subcomponent, an allowance for profit, and the administrative and overhead costs attributable to that component or subcomponent under normal accounting principles.

For the post-delivery audit, the actual cost, not the bid price, of a component is to be considered in calculating domestic content. Thus, the cost for the component would be the purchase price paid by the bidder (i.e., vehicle manufacturer) to the component or subcomponent supplier. Similarly, the cost for the subcomponent would be the actual purchase price paid by the component supplier to the subcomponent supplier. If the component is manufactured by the bidder, the cost of the component is calculated by adding the cost of labor and materials incorporated into the component or subcomponent, an allowance for profit, and the administrative and overhead costs attributable to that component or subcomponent under normal accounting principles.

4.2.4 Final Assembly

Manufacturing, as discussed above, refers to the activities that transform the subcomponents into a new and functionally different component.³⁶ A component may be manufactured at the final assembly location if the manufacturing process to produce the component is an activity separate and distinct from the final assembly of the end product.³⁷ The allowable costs for components manufactured by the bidder or offeror (i.e., the OEM) are set forth in 49 CFR § 661.11(m)(2).

³⁶ See 49 CFR § 661.11(e).

³⁷ See 49 CFR § 661.11(d).

Final assembly, in contrast, is the creation of the end product from individual elements brought together for that purpose through application of manufacturing processes. Final assembly activities for rail cars and buses are set forth in Appendix D to 49 CFR § 661.11. Labor costs involved in final assembly shall not be included in calculating component costs.

In the case of a rolling stock vehicle, while the car body is itself a component of the completed vehicle, it is also the component onto which the other components will be installed. Therefore, each item installed directly onto the car body is a component.

In the case of a railcar, the truck is likewise a component, as it is the structure onto which the individual components will be installed. Therefore, each item installed directly onto the truck (frame) would be a component.

The same rationale is applied for other equipment, such as propulsion equipment and communication equipment. In each case, the individual items that are installed on the vehicle are components.

4.3 Domestic Content Worksheet

This section illustrates one method for calculating domestic content of rolling stock. The sample spreadsheet is intended to allow a standard presentation of domestic content calculations for bus and rail vehicles, as well as facilitate verification that:

- All components are accounted for in the domestic content calculation and all of the vehicle's domestic and foreign content is accounted for.
- The cost of components and subcomponents are calculated in accordance with 49 CFR § 661.11.
- Each component has been correctly identified as either domestic or foreign based on the supplier identification and the manufacturing location.
- Each subcomponent has been correctly identified as either domestic or foreign based on the supplier identification and the manufacturing location.

4.3.1 Domestic Content Worksheet Instructions

Below is a sample of a Domestic Content Worksheet with step-by-step instructions for filling in the worksheet.³⁸

³⁸ The worksheet here reflects a domestic content requirement of more than 60%. Pursuant to 49 U.S.C. 5329(j)(2)(C), the domestic content percentage will increase starting in FY 2018. This worksheet provides an example of calculating the percentage of domestic content and uses the greater than 60% domestic content percentage requirement in place at the time of the FAST Act's passage. The worksheet can be modified to accommodate vehicles subject to higher domestic content.

SECTION 4: DOMESTIC CONTENT CALCULATIONS

Component / Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (if U.S. - City & State; if Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 - U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost	per 49 CFR § 661.11(m)(2)		\$303,000.00					\$303,000.00	\$0.00	48.48%	0.00%
Component 2											
Component 2	Component Supplier	Foreign	Any city, Country								
Subcomponent 2.1	Sub Supplier 2.1	U.S. w/tariff exempt	Any town, State	\$50,000.00	\$0.00	29.9%	0.0%				
Subcomponent 2.2	Sub Supplier 2.2	U.S. w/tariff exempt	Any town, State	\$10,000.00	\$0.00	6.0%	0.0%				
Subcomponent 2.3	Sub Supplier 2.3	Foreign	Any city, Country	\$0.00	\$55,000.00	0.0%	32.9%				
Subcomponent 2.4	Sub Supplier 2.3	Foreign	Any city, Country	\$0.00	\$25,000.00	0.0%	15.0%				
Subcomponent 2.5	Sub Supplier 2.4	Foreign	Any city, Country	\$0.00	\$8,000.00	0.0%	4.8%				
Subcomponent 2.6	Sub Supplier 2.5	Foreign	Any city, Country	\$0.00	\$9,000.00	0.0%	5.4%				
Foreign Component manuf cost	Component Supplier	Foreign	Any city, Country	\$0.00	\$7,000.00	0.0%	4.2%				
Foreign Component transp cost	Component Supplier	Foreign	Any city, Country	\$0.00	\$3,000.00	0.0%	1.8%				
Component 2 - U.S. & Foreign Costs Subtotal				\$60,000.00	\$107,000.00	35.9%	64.1%				
Component 2 Total Cost	per 49 CFR § 661.11(m)(1)		\$167,000.00					\$60,000.00	\$107,000.00	9.60%	37.92%
Component 3											
Component 3	Component Supplier	U.S.	Any town, State								
Subcomponent 3.1	Sub Supplier 3.1	Foreign	Any city, Country	\$0.00	\$50,000.00	0.0%	32.3%				
Subcomponent 3.2	Sub Supplier 3.2	U.S.	Any town, State	\$15,000.00	\$0.00	9.7%	0.0%				
Subcomponent 3.3	Sub Supplier 3.3	Foreign	Any city, Country	\$0.00	\$55,000.00	0.0%	35.5%				
Subcomponent 3.4	Sub Supplier 3.4	Foreign	Any city, Country	\$0.00	\$25,000.00	0.0%	16.1%				
U.S. Component manufacturing costs	Component Supplier	U.S.	Any town, State	\$10,000.00	\$0.00	6.5%	0.0%				
Component 3 - U.S. & Foreign Costs Subtotal				\$25,000.00	\$130,000.00	16.1%	83.9%				
Component 3 Total Cost	per 49 CFR § 661.11(i) and (m)(1)		\$155,000.00					\$25,000.00	\$130,000.00	4.00%	20.80%
Vehicle Material Subtotals -- U.S. & Foreign								\$388,000.00	\$237,000.00	62.08%	37.92%
Vehicle Material Total Cost (Total Cost of all Components)				\$625,000.00							

For simplicity, the vehicle consists of three components, one of which is manufactured by the bidder (i.e., the OEM), one is of foreign manufacture, and one is manufactured by a U.S. supplier. Those cells that are colored gray or white are intended for input based on documentation provided by the manufacturer. Other cells highlighted in yellow are calculated based on the information input to the worksheet.

Component 1 is manufactured by the OEM, contains more than 60% domestic content by cost, and is manufactured in the United States. Thus, the component is of domestic origin and the entire cost of the component may be used to calculate the domestic content of the vehicle. 49 CFR § 661.11(g). Because Component 1 is manufactured by the OEM, the cost of the component includes the labor and materials incorporated into the component, an allowance for profit and the administrative and overhead costs attributable to that component or subcomponent under normal accounting principles. 49 CFR § 661.11(m)(2).

Component 2 is manufactured overseas, contains less than 60% domestic content, and the U.S. subcomponents contained in the component received a tariff exemption. Thus, the U.S. subcomponents retain their domestic identity and can be included in the calculation of the domestic content of the vehicle. The manufacturing and transportation costs are included in calculating the cost of the foreign component. 49 CFR § 661.11(i), (m)(1).

Component 3 is manufactured in the U.S., but contains less than 60% domestic content. If a component is manufactured in the United States, but contains less than 60 percent domestic subcomponents, by cost, the cost of the domestic subcomponents and the cost of manufacturing the component may be included in the calculation of the domestic content of the end product. 49 CFR § 661.11(l).

STEP 1

In *Component/Subcomponent* column, fill in all vehicle components. The list of items that typically would be considered components of rolling stock identified in Appendices B and C to 49 CFR part § 661.11 is not all-inclusive. Identify components and subcomponents by name and/or part number traceable to the procurement. For each component, fill in the corresponding subcomponents as applicable. Identify subcomponents as separate line items. For components manufactured by the OEM, include a line for OEM labor/overhead/profit per section 661.11(m)(2). In *Supplier Name* column, fill in supplier's name for each component and corresponding subcomponent(s).

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (If U.S. - City & State; If Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 - U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost	per 49 CFR § 661.11(m)(2)		\$303,000.00					\$303,000.00	\$0.00	48.48%	0.00%
Component 2											
Component 2	Component Supplier	Foreign	Any city, Country								
Subcomponent 2.1	Sub Supplier 2.1	U.S. w/tariff exempt	Any town, State	\$50,000.00	\$0.00	29.9%	0.0%				
Subcomponent 2.2	Sub Supplier 2.2	U.S. w/tariff exempt	Any town, State	\$10,000.00	\$0.00	6.0%	0.0%				
Subcomponent 2.3	Sub Supplier 2.3	Foreign	Any city, Country	\$0.00	\$55,000.00	0.0%	32.9%				
Subcomponent 2.4	Sub Supplier 2.3	Foreign	Any city, Country	\$0.00	\$25,000.00	0.0%	15.0%				
Subcomponent 2.5	Sub Supplier 2.4	Foreign	Any city, Country	\$0.00	\$8,000.00	0.0%	4.8%				
Subcomponent 2.6	Sub Supplier 2.5	Foreign	Any city, Country	\$0.00	\$9,000.00	0.0%	5.4%				
Foreign Component manuf cost	Component Supplier	Foreign	Any city, Country	\$0.00	\$7,000.00	0.0%	4.2%				
Foreign Component transp cost	Component Supplier	Foreign	Any city, Country	\$0.00	\$3,000.00	0.0%	1.8%				
Component 2 - U.S. & Foreign Costs Subtotal				\$60,000.00	\$107,000.00	35.9%	64.1%				
Component 2 Total Cost	per 49 CFR § 661.11(m)(1)		\$167,000.00					\$60,000.00	\$107,000.00	9.60%	37.92%
Component 3											
Component 3	Component Supplier	U.S.	Any town, State								
Subcomponent 3.1	Sub Supplier 3.1	Foreign	Any city, Country	\$0.00	\$50,000.00	0.0%	32.3%				
Subcomponent 3.2	Sub Supplier 3.2	U.S.	Any town, State	\$15,000.00	\$0.00	9.7%	0.0%				
Subcomponent 3.3	Sub Supplier 3.3	Foreign	Any city, Country	\$0.00	\$55,000.00	0.0%	35.5%				
Subcomponent 3.4	Sub Supplier 3.4	Foreign	Any city, Country	\$0.00	\$25,000.00	0.0%	16.1%				
U.S. Component manufacturing costs	Component Supplier	U.S.	Any town, State	\$10,000.00	\$0.00	6.5%	0.0%				
Component 3 - U.S. & Foreign Costs Subtotal				\$25,000.00	\$130,000.00	16.1%	83.9%				
Component 3 Total Cost	per 49 CFR § 661.11(l) and (m)(1)		\$155,000.00					\$25,000.00	\$130,000.00	4.00%	20.80%
Vehicle Material Subtotals -- U.S. & Foreign								\$388,000.00	\$237,000.00	62.08%	37.92%
Vehicle Material Total Cost (Total Cost of all Components)				\$625,000.00							

STEP 2

In the first *Manufacturing Location* column, for each component enter U.S. or Foreign. For each subcomponent, enter U.S., U.S. with tariff exemption, or Foreign.

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (if U.S. - City & State; if Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 - U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost	per 49 CFR § 661.11(m)(2)		\$303,000.00					\$303,000.00	\$0.00	48.48%	0.00%

STEP 3

In the second *Manufacturing Location* column for each component and corresponding subcomponent(s), fill in the City and State for U.S. or the City and Country for Foreign.

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (if U.S. - City & State; if Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 - U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost	per 49 CFR § 661.11(m)(2)		\$303,000.00					\$303,000.00	\$0.00	48.48%	0.00%

STEP 4

In *Component Total Cost* row, fill in the component total cost. If the component was manufactured by the OEM, the cost of the component will include an allowance for profit and the administrative and overhead costs attributable to that component under normal accounting principles. 49 CFR § 661.11(m)(2). If the component was manufactured by a third-party supplier, then the component total cost is the actual cost of component. If the component is manufactured overseas, the cost of the component is what the OEM pays for it, plus transportation costs to the final assembly location. 49 CFR § 661.11(m)(1). If a component is manufactured in the United States, but contains less than the minimum domestic content, by cost, the cost of the domestic subcomponents

and the cost of manufacturing the component may be included in the calculation of the domestic content of the end product. 49 CFR § 661.11(l).

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (If U.S. - City & State; If Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 - U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost	per 49 CFR § 661.11(m)(2)		\$303,000.00					\$303,000.00	\$0.00	48.48%	0.00%

STEP 5

In *Component and Subcomponent Material Costs* columns:

- a) For each component, enter the dollar amount of the corresponding subcomponent(s) under the *U.S.* and *Foreign* sub-columns, on the designated row(s). The cost of each subcomponent is the price the OEM must pay to a subcontractor or supplier for that subcomponent. Transportation costs to the final assembly location must be included in calculating the cost of foreign subcomponents. 49 CFR § 661.11(m)(1). If a component or subcomponent is manufactured by the bidder or offeror, an allowance for profit, and the administrative and overhead costs attributable to that component or subcomponent under normal accounting principles may be included. 49 CFR § 661.11(m)(2)

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (If U.S. - City & State; If Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 - U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost	per 49 CFR § 661.11(m)(2)		\$303,000.00					\$303,000.00	\$0.00	48.48%	0.00%

- b) Compute the material subtotal cost for each component by adding the cost of all of its U.S. and Foreign corresponding subcomponents, and enter on the row designated *Component Material Subtotal* under the *U.S.* and *Foreign* sub-columns as applicable.

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (If U.S. - City & State; if Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost	per 49 CFR § 661.11(m)(2)		\$303,000.00					\$303,000.00	\$0.00	48.48%	0.00%

STEP 6

In *Subcomponent % of Component* and *Component Total %* columns:

- a) For each component, compute the material cost percentage of each of its U.S. and Foreign corresponding subcomponents, and enter on the designated rows under *U.S.* and *Foreign* sub-columns as applicable. This percentage is calculated by taking the cost of the subcomponent and dividing it by the total cost of the component.

Subcomponent Domestic Content Calculation	Subcomponent Foreign Content Calculation
\$20,000 (Subcomponent 1.1)	\$85,000 (Subcomponent 1.4)
÷	÷
\$303,000 (Component 1 Material Subtotal)	\$303,000 (Component 1 Material Subtotal)
=	=
6.6% U.S. Domestic Content	28.1% Foreign Content

- b) Calculate the total percentage by cost of U.S. content by dividing the *U.S. Subcomponents Subtotal* into *Component Total Cost*. Calculate the total percentage by cost of foreign content by dividing the *Foreign Subcomponents Subtotal* into *Component Total Cost*. These two numbers should total 100%.

Total Domestic Content Calculation	Total Foreign Content Calculation
\$218,000 (U.S. Subcomponents Subtotal)	\$85,000 (Foreign Subcomponents Subtotal)
÷	÷
\$303,000 (Component 1 Material Subtotal)	\$303,000 (Component 1 Material Subtotal)
=	=
71.9% U.S. Domestic Content	28.1% Foreign Content

SECTION 4: DOMESTIC CONTENT CALCULATIONS

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (if U.S. - City & State; if Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 - U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost	per 49 CFR § 661.11(m)(2)		\$303,000.00					\$303,000.00	\$0.00	48.48%	0.00%

STEP 7

In *U.S. Content by Cost* column and on the row designated *Component 1 Total Cost* for each component, enter the total U.S. and Foreign material costs for that component.

- a) If the component is of domestic origin (manufactured in the U.S.) and its subcomponents equal the required minimum percentage (*U.S. content >60%* (or *65% in FY 18 and 19, or 70% in FY20*), the whole component by cost is domestic.

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (if U.S. - City & State; if Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 - U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost	per 49 CFR § 661.11(m)(2)		\$303,000.00					\$303,000.00	\$0.00	48.48%	0.00%

- b) If the component is domestic and its subcomponents contain less than the required domestic minimum percentage, then add the total of only U.S. subcomponent material costs as well as the cost to manufacture the component, on the row *Component 3-U.S. & Foreign Costs Subtotal* to the column *U.S. Content by Cost*.

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (if U.S. - City & State; if Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 3											
Component 3	Component Supplier	U.S.	Any town, State								
Subcomponent 3.1	Sub Supplier 3.1	Foreign	Any city, Country	\$0.00	\$50,000.00	0.0%	32.3%				
Subcomponent 3.2	Sub Supplier 3.2	U.S.	Any town, State	\$15,000.00	\$0.00	9.7%	0.0%				
Subcomponent 3.3	Sub Supplier 3.3	Foreign	Any city, Country	\$0.00	\$55,000.00	0.0%	35.5%				
Subcomponent 3.4	Sub Supplier 3.4	Foreign	Any city, Country	\$0.00	\$25,000.00	0.0%	16.1%				
U.S. Component manufacturing costs	Component Supplier	U.S.	Any town, State	\$10,000.00	\$0.00	6.5%	0.0%				
Component 3 - U.S. & Foreign Costs Subtotal				\$25,000.00	\$130,000.00	16.1%	83.9%				
Component 3 Total Cost	per 49 CFR § 661.11(f) and (m)(1)		\$155,000.00					\$25,000.00	\$130,000.00	4.00%	20.80%

- c) If the component is foreign and the U.S. subcomponents being incorporated into the foreign component receive a tariff exemption,³⁹ then add the total of only U.S. subcomponent material costs on the row *Component 2 Material Subtotal*, to the column *Content by Cost*.

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (If U.S. - City & State; If Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 2											
Component 2	Component Supplier	Foreign	Any city, Country								
Subcomponent 2.1	Sub Supplier 2.1	U.S. w/tariff exempt	Any town, State	\$50,000.00	\$0.00	29.9%	0.0%				
Subcomponent 2.2	Sub Supplier 2.2	U.S. w/tariff exempt	Any town, State	\$10,000.00	\$0.00	6.0%	0.0%				
Subcomponent 2.3	Sub Supplier 2.3	Foreign	Any city, Country	\$0.00	\$55,000.00	0.0%	32.9%				
Subcomponent 2.4	Sub Supplier 2.3	Foreign	Any city, Country	\$0.00	\$25,000.00	0.0%	15.0%				
Subcomponent 2.5	Sub Supplier 2.4	Foreign	Any city, Country	\$0.00	\$8,000.00	0.0%	4.8%				
Subcomponent 2.6	Sub Supplier 2.5	Foreign	Any city, Country	\$0.00	\$9,000.00	0.0%	5.4%				
Foreign Component manuf cost	Component Supplier	Foreign	Any city, Country	\$0.00	\$7,000.00	0.0%	4.2%				
Foreign Component transp cost	Component Supplier	Foreign	Any city, Country	\$0.00	\$3,000.00	0.0%	1.8%				
Component 2 - U.S. & Foreign Costs Subtotal				\$60,000.00	\$107,000.00	35.9%	64.1%				
Component 2 Total Cost	per 49 CFR § 661.11(m)(1)		\$167,000.00					\$60,000.00	\$107,000.00	9.60%	37.92%

STEP 8

In *Component % of Vehicle* columns under *U.S.* and *Foreign* sub-columns, for each component, enter its U.S. and Foreign material cost percentage in relation to the total vehicle content percentage on the row designated *Vehicle Material Total Cost* under *U.S.* and *Foreign* sub- columns as applicable. Calculate the percentage as follows:

- a) If the component is of domestic origin and the minimum percentage of the subcomponents of that component by cost are domestic, then divide the cost on the row designated *U.S. Content* into the row designated *Vehicle Material Total Cost*. There will only be an entry for the *Component % of Vehicle* columns under the *U.S.* sub-column. The *Foreign* sub-column should record zero percentage.

Component 1 Total Cost	\$303,000
÷ Vehicle Material Total Cost	\$625,000
<hr/>	
= U.S. Component % of Vehicle	48.48%

³⁹ For more information on tariff exemptions, see 49 CFR § 661.11(i).

SECTION 4: DOMESTIC CONTENT CALCULATIONS

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (If U.S. - City & State; If Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 - U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost per 49 CFR § 661.11(m)(2)				\$303,000.00				\$303,000.00	\$0.00	48.48%	0.00%
Vehicle Material Total Cost (Total Cost of all Components)				\$625,000.00							

b) If the component is domestic and contains less than the required minimum domestic components by cost, you will need to calculate the total percentage of domestic and foreign content. Divide the cost on the row designated *U.S. Content* into row designated *Vehicle Material Total Cost*.

Total Domestic Content Calculation	Total Foreign Content Calculation
\$25,000 (U.S. Subcomponents Subtotal)	\$130,000 (Foreign Subcomponents Subtotal)
÷	÷
\$625,000 (Vehicle Material Total Cost)	\$625,000 (Vehicle Material Total Cost)
=	=
4.0% U.S. Domestic Content	20.80% Foreign Content

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (If U.S. - City & State; If Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 3											
Component 3	Component Supplier	U.S.	Any town, State								
Subcomponent 3.1	Sub Supplier 3.1	Foreign	Any city, Country	\$0.00	\$50,000.00	0.0%	32.3%				
Subcomponent 3.2	Sub Supplier 3.2	U.S.	Any town, State	\$15,000.00	\$0.00	9.7%	0.0%				
Subcomponent 3.3	Sub Supplier 3.3	Foreign	Any city, Country	\$0.00	\$55,000.00	0.0%	35.5%				
Subcomponent 3.4	Sub Supplier 3.4	Foreign	Any city, Country	\$0.00	\$25,000.00	0.0%	16.1%				
U.S. Component manufacturing costs	Component Supplier	U.S.	Any town, State	\$10,000.00	\$0.00	6.5%	0.0%				
Component 3 - U.S. & Foreign Costs Subtotal				\$25,000.00	\$130,000.00	16.1%	83.9%				
Component 3 Total Cost per 49 CFR § 661.11(l) and (m)(1)				\$155,000.00				\$25,000.00	\$130,000.00	4.00%	20.80%
Vehicle Material Total Cost (Total Cost of all Components)				\$625,000.00							

STEP 9

Add up all the percentages in the column *Component % of Vehicle Material* and the corresponding U.S. and Foreign sub-columns to determine the overall domestic content of the vehicle.

Component /Subcomponent	Supplier Name	Manufacturing Location (U.S. or Foreign)	Manufacturing Location (If U.S. - City & State; If Foreign - City & Country)	Component and Subcomponent Material Costs		Subcomponent % of Component and Component Total %		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Material Costs	
				U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1											
Component 1	OEM	U.S.	Any town, State								
Subcomponent 1.1	OEM	U.S.	Any town, State	\$20,000.00	\$0.00	6.6%	0.0%				
Subcomponent 1.2	OEM	U.S.	Any town, State	\$30,000.00	\$0.00	9.9%	0.0%				
Subcomponent 1.3	Sub Supplier 1.3	U.S.	Any town, State	\$60,000.00	\$0.00	19.8%	0.0%				
Subcomponent 1.4	Sub Supplier 1.3	Foreign	Any city, Country	\$0.00	\$85,000.00	0.0%	28.1%				
Subcomponent 1.5	Sub Supplier 1.5	U.S.	Any town, State	\$105,000.00	\$0.00	34.7%	0.0%				
OEM Labor/Overhead/profit	OEM	U.S.	Any town, State	\$3,000.00	\$0.00	1.0%	0.0%				
Component 1 - U.S. & Foreign Costs Subtotal				\$218,000.00	\$85,000.00	71.9%	28.1%				
Component 1 Total Cost	per 49 CFR § 661.11(m)(2)		\$303,000.00					\$303,000.00	\$0.00	48.48%	0.00%
Component 2											
Component 2	Component Supplier	Foreign	Any city, Country								
Subcomponent 2.1	Sub Supplier 2.1	U.S. w/tariff exempt	Any town, State	\$50,000.00	\$0.00	29.9%	0.0%				
Subcomponent 2.2	Sub Supplier 2.2	U.S. w/tariff exempt	Any town, State	\$10,000.00	\$0.00	6.0%	0.0%				
Subcomponent 2.3	Sub Supplier 2.3	Foreign	Any city, Country	\$0.00	\$55,000.00	0.0%	32.9%				
Subcomponent 2.4	Sub Supplier 2.3	Foreign	Any city, Country	\$0.00	\$25,000.00	0.0%	15.0%				
Subcomponent 2.5	Sub Supplier 2.4	Foreign	Any city, Country	\$0.00	\$8,000.00	0.0%	4.8%				
Subcomponent 2.6	Sub Supplier 2.5	Foreign	Any city, Country	\$0.00	\$9,000.00	0.0%	5.4%				
Foreign Component manuf cost	Component Supplier	Foreign	Any city, Country	\$0.00	\$7,000.00	0.0%	4.2%				
Foreign Component transp cost	Component Supplier	Foreign	Any city, Country	\$0.00	\$3,000.00	0.0%	1.8%				
Component 2 - U.S. & Foreign Costs Subtotal				\$60,000.00	\$107,000.00	35.9%	64.1%				
Component 2 Total Cost	per 49 CFR § 661.11(m)(1)		\$167,000.00					\$60,000.00	\$107,000.00	9.60%	37.92%
Component 3											
Component 3	Component Supplier	U.S.	Any town, State								
Subcomponent 3.1	Sub Supplier 3.1	Foreign	Any city, Country	\$0.00	\$50,000.00	0.0%	32.3%				
Subcomponent 3.2	Sub Supplier 3.2	U.S.	Any town, State	\$15,000.00	\$0.00	9.7%	0.0%				
Subcomponent 3.3	Sub Supplier 3.3	Foreign	Any city, Country	\$0.00	\$55,000.00	0.0%	35.5%				
Subcomponent 3.4	Sub Supplier 3.4	Foreign	Any city, Country	\$0.00	\$25,000.00	0.0%	16.1%				
U.S. Component manufacturing costs	Component Supplier	U.S.	Any town, State	\$10,000.00	\$0.00	6.5%	0.0%				
Component 3 - U.S. & Foreign Costs Subtotal				\$25,000.00	\$130,000.00	16.1%	83.9%				
Component 3 Total Cost	per 49 CFR § 661.11(l) and (m)(1)		\$155,000.00					\$25,000.00	\$130,000.00	4.00%	20.80%
Vehicle Material Subtotals -- U.S. & Foreign								\$388,000.00	\$237,000.00	62.08%	37.92%
Vehicle Material Total Cost (Total Cost of all Components)				\$625,000.00							

4.4 Special Considerations

This section discusses the best practices for special considerations encountered in the domestic content calculations.

4.4.1 Exchange Rates

The Buy America rule 49 CFR § 661.11(n) states “The cost of a component of foreign origin is set using the foreign exchange rate at the time the bidder or offeror executes the appropriate Buy America certificate.” The manufacturer will also use the same exchange rate(s) to calculate the foreign component cost for the post-delivery audit and submit to the recipient’s auditor for verification.

4.4.2 Transportation Costs

Transportation costs to the U.S. final assembly location must be included in calculating the cost of foreign components and foreign subcomponents. For components/subcomponents manufactured outside the U.S., the cost for

transportation must be included in the foreign content total (even if a U.S. shipping company or vessel is used).⁴⁰

4.4.3 Tariff Exemptions

If a tariff exemption is claimed for U.S. subcomponents of foreign manufactured components, the manufacturer must keep on file, for review by an auditor, proof of the tariff exemption for such items, in accordance with 49 CFR § 661.11(i) and (j). In turn, this requirement refers to the Code Harmonized Tariff Schedule in 19 U.S.C. 1202, which requires specific declarations/ forms.

In the event these declarations and/or forms may be difficult to acquire for a Buy America audit, the auditor may accept alternate form(s) of documentation, which proves that the duty was not paid. These may include NAFTA affidavits, Purchase Orders, or letters/emails from responsible parties.

4.5 Manufacturer Documentation

The recipient's final pre-award and post-delivery audit reports will not include confidential and proprietary information shared with the recipient or its auditor. Rather, the report is likely to include a list of components and their domestic content as a percentage. However, manufacturers should be mindful that FTA may audit a rolling stock's procurement's compliance with Buy America. Therefore, it is a best practice for manufacturers to maintain detailed records of the information and documentation shared with the recipient, particularly for the post-delivery audit.

Another best practice is for the manufacturer to require its suppliers to complete a Buy America Supplier Certificate for any item for which domestic content is being claimed. [Appendix B.5](#) provides a sample Supplier Buy America Certification template for bus and rail vehicles. The Buy America Supplier Certificate is the supplier's certification of its domestic content and U.S. manufacturing for the products being provided for this procurement.

The instructions for completing the certification are as follows.

⁴⁰ 49 CFR § 661.11(m)(1).

STEP 1

Fill in the supplier's contact information in the designated space at the top part of the form.

<u>SAMPLE BUY AMERICA SUPPLIER CERTIFICATION</u>	
Supplier:	_____
Address:	_____
Phone:	_____ Fax: _____
Email:	_____

STEP 2

Fill in the vehicle manufacturer's name and vehicle/contract/purchase order number that connects this certificate to the specific procurement project.

Vehicle Manufacturer:	_____
Vehicle/Contract/Purchase Order:	_____

STEP 3

Identify which of the three calculation scenarios apply for each component by checking the respective box.

- a) Check the first box if the component is manufactured in the U.S. and the required percentage of its subcomponents, by cost, are manufactured in the U.S. In this case, 100% of the cost of the component is domestic content.
- b) Check the second box if the component is manufactured in the U.S. and less than the required percentage of its subcomponents, by cost, are manufactured in the U.S. In this case, the cost of the U.S. subcomponents and the manufacturing costs of the component (considered to be the difference between the cost of the foreign subcomponents and the total cost of the component) are included in the domestic content calculation.
- c) Check the third box if the component is NOT manufactured in the U.S. but does contain U.S. subcomponents for which the supplier has documentation showing tariff exemption. In this case, the cost to manufacture the component and transportation costs to the final assembly location must be included in the foreign content calculation.

Calculate the cost of U.S. subcomponents by dividing the cost of U.S. subcomponents by the cost of all subcomponents for each component. Use extra pages as needed to cover all components and subcomponents in the supplier’s scope of provision.

This certifies the Supplier’s status of compliance with FTA Buy America Regulations set forth in 49 C.F.R § 661.11.	
For each component supplied for the Contract, the Supplier attests that (CHECK ONE BOX):	
<input type="checkbox"/>	More than the required percentage of the subcomponents, by cost, are of U.S. origin/manufacture, and the component is manufactured in the U.S. The Supplier attests that the U.S. content of subcomponents, by cost, is as indicated below.
<input type="checkbox"/>	Less than the required percentage of the subcomponents, by cost, are of U.S. origin/manufacture, and the component is manufactured in the U.S. (in such case, the cost of U.S. subcomponents and cost of U.S. manufacturing labor are eligible for inclusion towards domestic content calculations). The Supplier attests that the U.S. content of subcomponents, by cost, is as indicated below.
<input type="checkbox"/>	The component contains subcomponents of domestic origin, the component is NOT manufactured in the U.S., and the supplier has documentation showing a tariff exemption (in such case, the cost of U.S. subcomponents are eligible for inclusion towards domestic content calculations). The Supplier attests that the U.S. content of subcomponents, by cost, is as indicated below.

STEP 4

List each component and its subcomponents on the designated rows. Identify Components by name and part number traceable to the subject procurement.

- a) Indicate the manufacturing location for each component and subcomponent in the designated space.
- b) Indicate the component’s percentage of domestic subcomponents for each component in the designated space.
- c) Indicate each subcomponent’s percentage of the component’s domestic content in the designated space; the sum of the domestic content percentages of all subcomponents will add up to the total domestic content percentage of the component.

	MANUFACTURING LOCATION	% DOMESTIC CONTENT	% FOREIGN CONTENT
[COMPONENT NAME]	[Location of individual component]	[Total domestic content % of all subcomponents]	[Total content % of all subcomponents]
[SUBCOMPONENT NAME] <i>(use separate row for each subcomponent)</i>	[Location of individual subcomponent]	[Total domestic content % of individual subcomponent]	[Total U.S. content % of all subcomponents]
Attach additional sheets as needed			

STEP 5

Sign and date the form by an authorized official of the supplier. Print the name and title of the signatory beneath the signature line.

Information on this form is subject to audit by the Purchaser (i.e., recipient of federal funds, and/or by the FTA and/or its agents).

Date:	_____
Supplier Authorized Signature:	_____
Print Name:	_____
Title:	_____

SECTION
5

Frequently Asked Questions

This section addresses some of the most frequently asked questions about pre-award and post-delivery audit. This guidance is for information only. The responses do not constitute a determination of compliance with the Department of Transportation (DOT) rules and standards.

5.1 General

5.1.1 Who must conduct the pre-award and post-delivery audits?

The recipient, or auditor appointed by the recipient, must conduct the audits. The auditor may not be an employee of the manufacturer or its agent. In many instances, a recipient will retain the services of a consultant to conduct the audit.

5.1.2 When will the Buy America pre-award audit be conducted?

The law requires that the recipient must conduct a pre-award audit to confirm compliance with Buy America regulations prior to award of the contract. The recipient's executed Pre-award Buy America certificate and Pre-award Purchaser's Requirements certificate must be signed and dated prior to contract award.

5.1.3 When will the Buy America post-delivery audit be conducted?

The recipient must conduct a post-delivery audit prior to transfer of title of the rolling stock, or prior to the rolling stock being put into revenue service, whichever is first. The timing of the post-delivery audit is typically identified in the contract documents. "A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit ... is complete before title to the rolling stock is transferred to the recipient."⁴¹ The post-delivery audit will be performed on the first vehicle so as to quickly remedy any potential compliance problems.

The recipient should consider several factors in determining the appropriate time to verify that all material and work performed for the entire contract (including

⁴¹ 49 CFR § 663.31. In the definitions section, § 663.5 defines "post-delivery" as "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."

the last vehicle and all change orders) meets the Buy America requirements. A post-delivery audit is performed just prior to the transfer of title or entry into revenue service of the first vehicle, whichever comes first. For small procurements with short post-delivery periods, an audit conducted at that time may be sufficient. However, the recipient may consider whether an audit conducted on the first vehicle is sufficient to verify the actual domestic material content for the entire order. Because the post-delivery audit is conducted on the first vehicle, the recipient may need to conduct additional verifications to confirm that the full order satisfies the Buy America requirements, particularly if there are changes made in materials or scope after the first post-delivery audit. In certain cases, particularly on large orders with multi-year delivery schedules, recipients may find it appropriate to conduct Post-Delivery Domestic Content Monitoring as described in Section 3, to minimize the risk that subsequent vehicles in the order do not meet Buy America Requirements.

5.1.4 Do pre-award and post-delivery audits have to be conducted for procurements of support vehicles and wayside equipment?

No. The requirement to conduct pre-award and post-delivery audits only applies to rolling stock intended to carry passengers in revenue service, which include buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, and vehicles used for guideways and incline planes (49 CFR §§ 663.3 and 663.5(e)). Support vehicles and wayside equipment must comply with Buy America, but there is no requirement for pre-award and post-delivery audits.

5.1.5 Do support vehicles have to meet the minimum domestic content requirement and final assembly in U.S.?

Yes. All rolling stock, including support vehicles, must meet the requirements of the Buy America regulation, namely that final assembly of the rolling stock takes place in the United States, and that greater than 60% (65% in FY18 and FY19, 70% in FY20) of the cost of all components be U.S. manufactured.

5.2 Buy America Certification

5.2.1 Does a Buy America certification need to be conducted for every procurement,⁴² even if identical vehicles are being purchased from the same contractor year after year?

Yes. A manufacturer's past compliance with the Buy America rule does not mean that the manufacturer's products will always be compliant. Changes in design and

⁴² Refers to a single procurement (even if multi-year), a multi-state procurement, and/or multiple individual procurements by several recipients or subrecipients.

technical developments, as well as changing suppliers and scope of manufacturing and/or final assembly, may make new products noncompliant. In the case that pre-award and post-delivery audits have been conducted for a given vehicle, the same information may be used to demonstrate compliance at a later date as long as it is verified and documented that there have been no changes made affecting compliance since the last certification.

5.2.2 Is the domestic content threshold calculated as a percentage of the total vehicle price?

No. The domestic content threshold is calculated as a percentage of the total cost of all components, excluding the cost for final assembly of the vehicle. The cost of an individual domestic component is the price a vehicle manufacturer pays a supplier for that domestic component. For foreign components, the cost of the individual foreign component is the price a vehicle manufacturer pays the foreign supplier for that individual foreign component, plus transportation costs. 49 CFR § 661.11(m)(1).

All non-recurring expenses such as engineering, mockups, fixtures/tooling, spare parts, manuals, and training also are excluded from the Buy America component calculations.

5.2.3 How is the origin of a component determined?

A component is considered to be of domestic origin if more than the required percentage, by cost, of the subcomponents of that component are of domestic origin, and component manufacturing takes place in the United States. If the component meets these requirements, the entire cost of the component may be counted as domestic content in the Buy America calculation of the vehicle.

The cost of an individual domestic subcomponent is the price a subcomponent manufacturer pays a supplier for that domestic subcomponent. For foreign subcomponents, the cost of the individual foreign subcomponent is the price a manufacturer pays the foreign supplier for that foreign subcomponent plus transportation costs. 49 CFR § 661.11(m)(1).

A component may be manufactured at the final assembly location if the manufacturing process to produce the component is an activity separate and distinct from the final assembly of the end product. 49 CFR § 661.11(d).

5.2.4 How is the origin of a subcomponent determined?

Subcomponents manufactured in the United States are considered to be domestic.

Subcomponents manufactured in the United States and exported for inclusion in a component manufactured outside the United States are considered to

be of domestic origin if they received a documented tariff exemption for importation back into the United States. If this is the case, then the cost of the subcomponent may be included in the component's domestic content calculation. The cost of the subcomponent at the time of export is the cost that should be used in the calculation. If the subcomponent has not received a tariff exemption, then it may not be included in the domestic content calculation, and will be counted as foreign content.

Raw materials exported for use in a component manufactured outside the United States, are not considered to be a subcomponent for the purpose of calculating domestic content. The value of those raw materials is included in the cost of the foreign component. 49 CFR § 661.11(k).

5.2.5 Do the subcomponents have to be broken down into sub-subcomponents?

No. The Buy America regulation does not extend down to the sub-subcomponent level for Buy America calculation purposes.

5.2.6 Are the costs of both domestic and foreign subcomponents used in the Buy America Domestic Content Calculation for Components?

The entire cost of a component is used in its content calculation. A component is considered domestic if it is manufactured in the United States and its subcomponents have the required domestic content percentage⁴³ by cost. 49 CFR § 661.11(g). If this is so, then the entire cost (selling price) of the component can be claimed as domestic content, including its foreign subcomponents.

5.2.7 Do only components of domestic origin contribute towards the domestic Buy America calculations?

No. Domestic subcomponents of components manufactured in the United States that do not contain the required minimum percentage of domestic subcomponents, by cost, and domestic subcomponents incorporated into foreign-manufactured components that received a tariff exemption for importation back into the United States, also may be used in the Buy America domestic content calculation. For example, if a component manufactured in the U.S. contains 20 percent of its subcomponents manufactured in the U.S. and 80 percent of its subcomponents manufactured outside the U.S., the manufacturer receives credit for the cost of the 20 percent of U.S. subcomponents.

⁴³ Minimum threshold is more than 60% for FY16 and FY17, more than 65% for FY18 and FY19, and more than 70% for FY20.

5.2.8 If a component contains less than the required minimum percentage of domestic subcomponents, how would it be used in the calculation?

If a component is manufactured in the U.S., only the cost of the domestic subcomponents and the cost of manufacturing the domestic component are included in the calculation of the domestic content of the end product. 49 CFR § 661.11(l). The cost of its foreign subcomponents must be counted as foreign content.

5.2.9 Can components from foreign sources with domestic subcomponents be used in the calculation?

Yes. If foreign-manufactured components have domestic subcomponents that received a tariff exemption for importation back into the United States, then the cost of those domestic subcomponents may be used in the domestic content calculation. The cost of manufacturing the component, and the overhead costs associated with manufacturing that component, plus the cost of transporting the component, may not be used in the domestic content calculation, because it has been manufactured outside of the United States.

5.2.10 How are currency exchange rates addressed for Buy America audits?

The cost of a component of foreign origin is set using the foreign exchange rate at the time the bidder or offeror executes the Buy America certificate. 49 CFR § 661.11(n). However, large projects with long post-delivery periods and economic fluctuations can affect material costs between the times of the pre-award and post-delivery audits. In all cases, component and subcomponent costs paid in other than U.S. currency must use exchange rates as of the date of the supplier's executed supplier Buy America certificate. The post-delivery audit needs to verify the actual costs paid to suppliers for all components and subcomponents.

5.2.11 Can systems be components for domestic content calculations? Examples would be air compressor and pneumatic systems, electrical systems, and train control systems.)

Yes. Pursuant to Appendix B to § 661.11, "Typical Components of Buses," the following systems are identified as components: air compressor and pneumatic systems, generator/alternator and electrical systems, steering system assemblies, heating systems, and door control systems. In addition, pursuant to Appendix C

to § 661.11, “Typical Components of Rail Rolling Stock,” the following systems are identified as components: train control systems.

5.2.12 What if the manufacturer is concerned about releasing proprietary information?

If the manufacturer is concerned about releasing proprietary information, the manufacturer and recipient may agree that the recipient will contract with an external auditor to conduct the manufacturer’s Buy America certification review—and assure the manufacturer that the cost data will be kept confidential. Alternatively, a recipient may be able to keep its Buy America audit function independent by using a “firewall” and assuring the manufacturer that those employees of the recipient performing the Buy America audit are prohibited from disclosing any of the manufacturer’s proprietary data. Further, the review of documents may occur at the manufacturer’s place of business; there is no requirement that the recipient or its auditors obtain copies of the documents; they need simply to review them. Whether conducted by a contractor or the recipient’s employees, the manufacturer may require the reviewer to sign a non-disclosure agreement prior to reviewing the documents.

5.3 Purchaser’s Requirements Certification

5.3.1 What is the responsibility of the resident inspector?

A resident inspector is required to visit the manufacturer’s final assembly facility during the manufacturing period for purchases of more than 10 buses intended for revenue passenger service. The inspector must prepare a report summarizing how the construction and operation of the vehicles meet (or do not meet) the terms of the contract and provide accurate records of all vehicle construction activities. The intent of the requirement⁴⁴ is to help recipients ensure that the vehicles will comply with their contract specifications.

The recipient must ensure that the resident inspector’s report satisfies all requirements of the regulations. It is the recipient’s responsibility to ensure the vehicles comply with contract specifications, and the purpose of the resident inspector’s report is to assist the recipient in verifying that the vehicles meet the required specifications.

5.3.2 Where the contract provides for more than one post-delivery period, must the recipient conduct a post-delivery audit for each delivery period?

Yes. When a contract provides for multiple deliveries and the post-delivery periods are scheduled at substantially different time intervals, such as 6 months

⁴⁴ 49 CFR § 663.37(a).

or 1 year apart, the recipient must complete a post-delivery audit for each period. This does not mean that a separate audit is required for each vehicle within a post-delivery period.

5.4 FMVSS Certification

5.4.1 Which FMVSS certifications are required?

Title 49 CFR part 571 covers all Federal Motor Vehicle Safety Standards. Examples of the types of FMVSS certifications are included in this Handbook in Appendices B.7, B.8, B.13, and B.14.

5.4.2 Must ADA compliant vehicles be FMVSS certified?

Yes. All motor vehicles subject to the FMVSS regulations must be certified to meet the applicable standards.

Checklists

A.1 Proposal Compliance Checklist

KEY TRANSIT AGENCY SOLICITATION REQUIREMENTS	CHECK OF ROLLING STOCK MANUFACTURER'S COMPLIANCE	KEY COMMENTS
COMPLIANCE WITH KEY FEDERAL REQUIREMENTS		
Buy America	YES	Pre-Award Certificate on file
Pre-Award and Post-Delivery Audit	YES	Pre-Award Audit underway
Lobbying	YES	No exceptions taken
Providing Fraudulent Information, False Statements and Related Acts	YES	No exceptions taken
Civil Rights	YES	No exceptions taken
Disadvantage Business Enterprises (i.e., Transit Vehicle Manufacturer ⁴⁵ requirement)	YES	No exceptions taken
Americans with Disability Act	YES	No exceptions taken
Compliance with ALL other required federal provisions	YES	No exceptions taken
COMPLIANCE WITH ALL TRANSIT AGENCY SPECIAL PROVISIONS		
Terms of schedule and liquidated damages	YES	No exceptions taken
Shipment and delivery	YES	No exceptions taken
City Inspection and testing	YES	No exceptions taken
Acceptance	YES	No exceptions taken
Payment provisions	YES	Agreed to additional payment item for completion of Pilot Car Testing.
Spare parts	YES	Negotiated Spare parts items
Warranty terms	YES	Negotiated terms for extended warranties of components
COMPLIANCE WITH ALL TECHNICAL SPECIFICATIONS REQUIREMENTS		
Carbody/bus body/trucks and axles	YES	No exceptions taken
Cab/drivers area and controls	YES	No exceptions taken
Passenger doors	YES	No exceptions taken
HVAC	YES	No exceptions taken
Auxiliary electric equipment	YES	No exceptions taken
Propulsion	YES	Agreed to Addendum 2.
Brakes	YES	No exceptions taken
Communications	YES	No exceptions taken
Train control (rail vehicles only)	YES	No exceptions taken
Monitoring and diagnostics	YES	No exceptions taken
Materials and overall work quality	YES	No exceptions taken
Software	YES	No exceptions taken
Manuals and training	YES	Manuals and Training hours and terms negotiated.

⁴⁵ See 49 U.S.C. §26.49.

A.2 Pre-Award Checklists

A.2.1 Recipient at Pre-Award Audit

Pre-Award Audit (Before signing Contract with Bidder)	Buy America Certification
	A. <input type="checkbox"/> Reviewed and Verified Minimum Domestic Content; AND <input type="checkbox"/> Reviewed and Verified Proposed U.S. Final Assembly, Location, Operations, and Total Cost OR B. <input type="checkbox"/> Requested and Received Buy America Waiver
	Purchaser's Requirements Certification
	A. <input type="checkbox"/> Checked Bid Specification Compliance with Solicitation Specifications; AND <input type="checkbox"/> Completed a Manufacturer Capability and Capacity Review
	FMVSS Certifications (IF APPLICABLE): Requested and Received Manufacturer's letter stating:
	A. <input type="checkbox"/> The information to be included on the FMVSS Stickers OR B. <input type="checkbox"/> The Vehicles Are Not Subject to FMVSS

A.2.2 Manufacturer at Pre-Award Audit

Pre-Award Audit (Before signing Contract with Bidder)	Buy America Certification
	A. <input type="checkbox"/> Prepared and provided to recipient documentation, including but not limited to, documentation from suppliers sufficient for recipient to verify domestic content of vehicle; AND <input type="checkbox"/> Provided documentation of U.S. Final Assembly, Location, Operations, and Total Cost OR B. <input type="checkbox"/> Submitted a Buy America Waiver
	Purchaser's Requirements Certification
	A. <input type="checkbox"/> Responded to recipient solicitation clearly indicating Bid Specification Compliance with Solicitation Specifications; AND <input type="checkbox"/> Responded to sections in the Solicitation regarding Manufacturer Capability and Capacity Review
	FMVSS Certifications (IF APPLICABLE): Prepared letter stating:
	A. <input type="checkbox"/> The information to be included on the FMVSS Stickers OR B. <input type="checkbox"/> The Vehicles Are Not Subject to FMVSS

A.2.3 Pre-Award Audit Purchaser’s Requirements Certification for Recipients

For Pre-award Purchaser’s Requirements Certification, the recipient must verify that the rolling stock the recipient is contracting for is the same product described in the purchaser’s solicitation specification, and the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient’s solicitation specification. Recipients may employ a combination of different departments or third parties to conduct these verifications. In such case, the party responsible for verification will sign/initial the items in their scope. The following items represent a checklist of the tasks to complete the pre-award purchaser’s requirements audit.

Activity	Supporting Document	Verified
Part 1		
Comparison of rolling stock manufacturer’s specification with purchaser’s solicitation specification	<ul style="list-style-type: none"> • Recipient’s checklist for comparison of manufacturer’s specification with solicitation specification; 	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Manufacturer’s supporting documents such as its proposal, manufacturer and supplier specifications, product brochures, technical data sheets, drawings, and bills of material. 	<input type="checkbox"/>
Part 2		
Assessment of manufacturer’s capability	<ul style="list-style-type: none"> • Recipient’s checklist for manufacturer’s capability assessment; 	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Manufacturer’s supporting documents such as descriptions of facilities and equipment, plant output capacity, facility layout drawing/flow diagram, production line layout/flow diagram, staffing counts by craft, QA/QC Plan, mobilization plan, list of concurrent work, list of past performance on similar projects, financial records, and other documents; 	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Major supplier/subcontractor supporting documents same as described in previous bullet above; 	<input type="checkbox"/>
	<ul style="list-style-type: none"> • Manufacturer’s project level plans such as QA/QC plan, schedule, supplier management plan, and document/configuration control plan. 	<input type="checkbox"/>
Reviewed and accepted by:		
Signature	Date	
Title		

A.2.4 Comparison of Manufacturer’s Specification with Purchaser’s Solicitation Specification

As part of the Pre-award Purchaser’s Requirements Certification process, the recipient shall verify that the rolling stock the recipient is contracting for is the same product described in the purchaser’s solicitation specification. The following items would typically be considered for this review.

Solicitation Specification Item		Remark	Manufacturer’s Specification Complies?
1.	Carbody: structure, high/low boarding, diaphragm		<input type="checkbox"/>
2.	Windows: windshield, passenger side windows, emergency windows, door windows, sliding sash		<input type="checkbox"/>
3.	Interior: flooring, seats, wheelchair securement, bicycle storage, luggage racks, exit path marking (as applicable)		<input type="checkbox"/>
4.	Trucks/axles, sanding equipment (if required)		<input type="checkbox"/>
5.	Propulsion equipment		<input type="checkbox"/>
6.	Brake equipment; wheel slip/slide, parking brake		<input type="checkbox"/>
7.	Auxiliary electrical equipment		<input type="checkbox"/>
8.	Cab/driver’s area controls and equipment		<input type="checkbox"/>
9.	HVAC		<input type="checkbox"/>
10.	Doors and door control system with ADA audible alarm and warning lights		<input type="checkbox"/>
11.	Lighting: interior, emergency, exterior		<input type="checkbox"/>
12.	Communications		<input type="checkbox"/>
13.	Toilet room; water and waste system (if required)		<input type="checkbox"/>
14.	Coupler/draft gear (rail vehicles only)		<input type="checkbox"/>
15.	Intercar trainlines/receptacles (rail vehicles only)		<input type="checkbox"/>
16.	Train control/cab signal equipment (rail vehicles only)		<input type="checkbox"/>
17.	Monitoring and diagnostics		<input type="checkbox"/>
18.	Materials and workmanship standards		<input type="checkbox"/>
19.	Software		<input type="checkbox"/>
20.	Manuals and training		<input type="checkbox"/>
Other Provisions			
21.	Compliance with applicable Federal, State, local regulations		<input type="checkbox"/>
22.	Buy America		<input type="checkbox"/>
23.	Warranty terms		<input type="checkbox"/>
Reviewed and accepted by:			
Signature		Date	
Title			

A.3 Post-Delivery Checklists

A.3.1 Recipient at Post-Delivery Audit

Post-Delivery Audit (Before using the Rolling Stock in Transit Service or Before Transfer of Title, Whichever Occurs First)	Buy America Certification
	A. <input type="checkbox"/> Reviewed and Verified the amount of Domestic Content; AND <input type="checkbox"/> Reviewed and Verified Proposed U.S. Final Assembly, Location, Operations, and Total Cost OR B. <input type="checkbox"/> Requested and Received Buy America Waiver
	Purchaser's Requirements Certification
	A. For Procurements of Rail Vehicles and More than 10 Buses or Modified Vans (and More than 20 Buses in Rural Areas and Small UZAs) <input type="checkbox"/> Completed Resident Inspector's Report; AND <input type="checkbox"/> Completed Visual Inspections and Road Tests OR B. For Procurement of 10 or Fewer Buses or Modified Vans, any Number of Unmodified Vans, and 20 or Fewer Buses in Rural Areas and Small UZAs <input type="checkbox"/> Completed Visual Inspection and Road Test
	FMVSS Certifications (IF APPLICABLE)
	A. <input type="checkbox"/> Verified FMVSS Sticker is Affixed to Each Vehicle OR B. <input type="checkbox"/> Requested and Received Manufacturer's Letter Stating that the Vehicles Are Not Subject to FMVSS.

A.3.2 Manufacturer at Post-Delivery Audit

Post-Delivery Audit (Before using the Rolling Stock in Transit Service or Before Transfer of Title, Whichever Occurs First)	Buy America Certification
	A. <input type="checkbox"/> Prepared and provided to the recipient the Domestic Content Worksheet based on actual cost; AND <input type="checkbox"/> Provide actual U.S. Final Assembly Total Cost OR B. <input type="checkbox"/> Submitted a Buy America Waiver prior to award
	Purchaser's Requirements Certification
	C. <input type="checkbox"/> Completed Visual Inspections and Road Tests and Provide reports to the Resident Inspector.
	FMVSS Certifications (IF APPLICABLE)
	C. <input type="checkbox"/> Affixed FMVSS Stickers to Each Vehicle OR D. <input type="checkbox"/> Provided letter stating that the Vehicles Are Not Subject to FMVSS.

A.3.3 Supplier at Post-Delivery Audit

Post-Delivery Audit (Before using the Rolling Stock in Transit Service or Before Transfer of Title, Whichever Occurs First)	Buy America Certification
	A. <input type="checkbox"/> Prepared and provided to Rolling Stock Manufacturer the Component Supplier Buy America Certification including any updates from the Pre-Award Audit on the location of component manufacture and the percent domestic and foreign content of each subcomponent.

A.3.4 Resident Inspector’s Report for Post-Delivery Purchaser’s Requirements Certification

For the Post-delivery Purchaser’s Requirements Certification, the recipient shall review and retain the resident inspector’s report of the recipient’s oversight of the period of manufacture of the rolling stock being purchased. The following items would typically be included in the resident inspector’s report documentation, as applicable.

Resident Inspector’s Report Contents	Verified
1. Description of recipient’s overall program to oversee manufacture of the rolling stock identifying all activities that verify compliance of product with contract and specifications including pilot car program, FAI, qualification testing, production inspection and production testing.	<input type="checkbox"/>
2. Description of activities performed by recipient’s resident inspection staff or designee at manufacturer’s site(s) including pilot car inspection, qualification testing, first article inspections, source inspections, production in-process inspections, hold point inspections and final static and dynamic functional testing.	<input type="checkbox"/>
3. Description of final assembly activities performed by manufacturer at U.S. final assembly site.	<input type="checkbox"/>
4. Reference that vehicle history books were provided by the manufacturer to the recipient and reviewed prior to authorization for shipment briefly summarizing the contents of the vehicle history books and providing samples of critical documents such as final test results.	<input type="checkbox"/>
5. Include sample authorization for shipment form for each vehicle showing place to record open items and resident inspector signature and date.	<input type="checkbox"/>
6. Include sample documents demonstrating the manufacturer’s implementation of its quality program; for example, a completed Nonconformance Report form will be included that identifies the deficiency and corrective action that was made. Any nonconforming material that was repaired (to other than full conformance with specification) or deemed usable as is must be approved/signed by the recipient/resident inspector.	<input type="checkbox"/>
7. Reference that manufacturer maintained complete records of construction of each vehicle containing details beyond the scope of the resident inspector’s report (such as the manufacturer’s QA/QC inspections).	<input type="checkbox"/>
8. Confirmation that delivered vehicles have been inspected and road tested to confirm that they meet contract requirements including a summary of static, dynamic and performance tests performed on each vehicle and a sample of key test report results showing sign-offs for completed tests, failed tests and any corrective action. Include sample documents.	<input type="checkbox"/>
9.	<input type="checkbox"/>
Reviewed and accepted by:	
Signature	Date
Title	

Certificates and Forms

The forms provided in this Appendix are samples only, intended to provide guidance to recipients. The first two forms, B.1 and B.2, track the regulation and therefore the format is required. The other forms may be modified to suit the needs of the recipient, as long as the form developed by the recipient includes the information required by the regulations.

B.1 Certificate of Compliance with Buy America Rolling Stock

<u>CERTIFICATE OF COMPLIANCE WITH</u> <u>BUY AMERICA ROLLING STOCK REQUIREMENTS</u>	
The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations in 49 CFR § 661.11.	
Date:	_____
Signature:	_____
Company:	_____
Print Name:	_____
Title:	_____

B.2 Certificate of Non-Compliance with Buy America Rolling Stock Requirements

<u>CERTIFICATE OF NON-COMPLIANCE WITH</u> <u>BUY AMERICA ROLLING STOCK REQUIREMENTS</u>	
<p>The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exemption to the requirement consistent with 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR § 661.7.</p>	
Date:	_____
Signature:	_____
Company:	_____
Print Name:	_____
Title:	_____

B.3 Sample Pre-Award Buy America Certification

<u>PRE-AWARD BUY AMERICA CERTIFICATION</u>
<p>As required by 49 CFR part 663 – Subpart B, _____ (the recipient) is satisfied that the vehicles to be purchased, _____ (number and description of vehicles) from _____ (the manufacturer), meet the requirements of 49 U.S.C. 5323(j), as amended. The recipient <input type="checkbox"/>, or its appointed auditor <input type="checkbox"/> _____ (the auditor – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the vehicles identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the vehicles, including a description of the activities that will take place at the final assembly point and the cost of final assembly.</p> <p>Date: _____</p> <p>Recipient Authorized Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

B.4 Sample Pre-Award Buy America Certificate of Non-Compliance

PRE-AWARD BUY AMERICA CERTIFICATE OF NON-COMPLIANCE

As required by 49 CFR part 663 – Subpart B, _____ (the recipient) keeps on file a certification that there is a letter from FTA which grants a waiver to the rolling stock to be purchased, _____ (number and description of rolling stock), from the Buy America requirements under 49 U.S.C. 5323(j)(2)(A), (2)(B), or (2)(D), as amended.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____

B.5 Sample Pre-Award Purchaser's Requirements Certification

<u>PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION</u>
<p>As required by 49 CFR part 663 – Subpart B, _____ (the recipient) certifies that the vehicles to be purchased, _____ (number and description of 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 vehicles that meet the specifications set forth in the solicitation.</p> <p>Date: _____</p> <p>Recipient Authorized Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

B.6 Sample Supplier Buy America Certification

Instructions for Completing Buy America Supplier Certificate

The manufacturer may require suppliers to complete a Buy America Supplier Certificate for any item for which domestic content is being claimed. The Buy America Supplier Certificate is the supplier's legal attestation of its domestic content and location of manufacturing for the products being provided for the procurement.

1. Fill in the supplier's contact information in the designated space at the top part of the form.
2. Fill in the vehicle manufacturer's name and the vehicle/contract/purchase order number that connects the certificate to the specific procurement project.
3. Identify which of the three calculation scenarios apply for each component by checking the respective box.
 - a) Check the first box if the component is manufactured in the U.S. and more than the required percentage of its subcomponents, by cost, are manufactured in the U.S.
 - b) Check the second box if the component is manufactured in the U.S. and has less than the required percentage of its subcomponents, by cost, manufactured in the U.S.
 - c) Check the third box if the component is NOT manufactured in the U.S. but does contain U.S. subcomponents for which the supplier has documentation showing a tariff exemption.

The cost of U.S. subcomponents is calculated by dividing the cost of U.S. subcomponents by the cost of all subcomponents for each component. Generally, the cost of each subcomponent is the price the bidder or offeror paid to the supplier for the subcomponent. Transportation costs to the final assembly location must be included in calculating the cost of foreign subcomponents. 49 CFR § 661.11(m)(1). For exceptions, see 49 CFR § 661.11(o).

Use extra pages as needed to cover all components and subcomponents in the supplier's scope of provision.

4. List each component and its subcomponents on the designated rows. Components should be identified by name and/or part number traceable to the subject procurement.

- a) Indicate the manufacturing location for each component and subcomponent in the designated space;
 - b) Indicate the component's percentage of domestic subcomponents for each component in the designated space;
 - c) Indicate each subcomponent's percentage of the component's domestic content in the designated space; the sum of all the subcomponents' domestic content percentages will equal the domestic content percentage of the component.
5. The form must be signed and dated by an authorized official of the supplier. Print the name and title of the signatory beneath the signature line.

Information on this form is subject to audit by the Purchaser, i.e., recipient of FTA funds, and/or by the Federal Transit Administration (and/or its agents).

SAMPLE BUY AMERICA SUPPLIER CERTIFICATION

Supplier: _____
 Address: _____
 Phone: _____ Fax: _____
 Email: _____
 Vehicle Manufacturer: _____
 Vehicle/Contract/Purchase Order: _____

This certifies the Supplier's status of compliance with FTA Buy America Regulations set forth in 49 CFR § 661.11.

For each component supplied for the Contract, the Supplier attests that (CHECK ONE BOX):

- The required percentage of subcomponents, by cost, are of U.S. origin/manufacture, and the component is manufactured in the U.S. The Supplier attests that the U.S. content of subcomponents, by cost, is as indicated below. See 49 CFR § 661.11(g).
- Less than the required percentage of the subcomponents, by cost, are of U.S. origin/manufacture, and the component is manufactured in the U.S. (in such case, the cost of U.S. subcomponents is eligible for inclusion towards domestic content calculations). The Supplier attests that the U.S. content of subcomponents, by cost, is as indicated below. See 49 CFR § 661.11(l).
- The component contains subcomponents of domestic origin, however, the component is NOT manufactured in the U.S. (in such case, the cost of U.S. subcomponents is eligible for inclusion towards domestic content calculations only if the U.S. subcomponent(s) received a tariff exemption). The Supplier attests that the U.S. content of subcomponents, by cost, is as indicated below. See 49 CFR § 661.11(i).

	MANUFACTURING LOCATION	% DOMESTIC CONTENT	% FOREIGN CONTENT
[COMPONENT NAME]	<i>[Location of individual component manufacturer]</i>	<i>[Total domestic content % of all subcomponents]</i>	<i>[Total foreign content % of all subcomponents]</i>
[SUBCOMPONENT NAME] <i>(use rows for each subcomponent)</i>	<i>[Location of individual subcomponent manufacturer]</i>	<i>[Total domestic content % of individual subcomponent]</i>	<i>[Total foreign content % of individual subcomponents]</i>

Attach additional sheets as needed

Date: _____
 Supplier Authorized Signature: _____
 Print Name: _____
 Title: _____

B.7 Sample Pre-Award FMVSS Compliance Certification

<u>PRE-AWARD FMVSS COMPLIANCE CERTIFICATION</u>
<p>As required by 49 CFR part 663 – Subpart D, _____ (the recipient) certifies that it received, at the pre-award stage, a copy of _____’s (the manufacturer) self-certification information stating that the vehicles, _____ (number and description of vehicles), will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.</p> <p>Date: _____</p> <p>Recipient Authorized Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

B.8 Sample Pre-Award Certification of FMVSS Inapplicability

<u>PRE-AWARD CERTIFICATION OF FMVSS INAPPLICABILITY</u>
<p>As required by 49 CFR part 663 – Subpart D, _____ (the recipient) certifies that it received at the pre-award stage, a statement from _____ (the manufacturer) indicating that the vehicles, _____ (number and description of vehicles), will not be subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.</p> <p>Date: _____</p> <p>Recipient Authorized Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

B.9 Sample Post-Delivery Buy America Certification

<u>POST-DELIVERY BUY AMERICA CERTIFICATION</u>
<p>As required by 49 CFR part 663 – Subpart C, _____ (the recipient) certifies that it is satisfied that the vehicles received, _____ (number and description of vehicles) from _____ (the manufacturer), meet the requirements of 49 U.S.C. 5323(j), as amended. The recipient <input type="checkbox"/>, or its appointed auditor <input type="checkbox"/> _____ (the auditor – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the vehicles identified by the manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for the vehicles, including a description of the activities that took place at the final assembly point and the cost of final assembly.</p> <p>Date: _____</p> <p>Recipient Authorized Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

B.10 Sample Post-Delivery Buy America Certificate of Non-Compliance

<u>POST-DELIVERY BUY AMERICA CERTIFICATE OF NON-COMPLIANCE</u>
<p>As required by 49 CFR part 663 – Subpart C, _____ (the recipient) certifies that there is a letter from FTA which grants a waiver to the vehicles received, _____ (manufacturer, number and description of vehicles) from the Buy America requirements under 49 U.S.C. 5323(j), as amended.</p> <p>Date: _____</p> <p>Recipient Authorized Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

B.11 Sample Post-Delivery Purchaser's Requirements Certification (More Than Ten Buses or Modified Vans)

POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION

As required by 49 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
 _____'s (the manufacturer),
 manufacturing site during the period of manufacture of the vehicles,
 _____ (number and
 description of the vehicles). The inspector monitored manufacturing and completed a report
 on the manufacture of the vehicles, and provided accurate records of all vehicle construction
 activities. The report addresses how the construction and operation of the vehicles fulfill the
 contract specifications. After reviewing the report, visually inspecting the vehicles, and
 performance testing the vehicles, the recipient certifies that the vehicles meet the contract
 specifications.

Date: _____

Recipient Authorized Signature: _____

Print Name: _____

Title: _____

B.12 Sample Post-Delivery Purchaser's Requirements Certification (Ten or Fewer Buses or Modified Vans, or any Number of Unmodified Vans)

<u>POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION</u>
<p>As required by 49 CFR part 663 – Subpart C, after visually inspecting and road testing the contract vehicles, _____ (the recipient) certifies that the vehicles, _____ (number and description of vehicles) from _____ (the manufacturer), meet the contract specifications.</p> <p>Date: _____</p> <p>Recipient Authorized Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

B.13 Sample Post-Delivery FMVSS Compliance Certification

<u>POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION</u>
<p>As required by 49 CFR part 663 – Subpart D, _____ (the recipient) certifies that it received, at the post-delivery stage, a copy of _____’s (the manufacturer) self-certification information stating that the vehicles, _____ (number and description of vehicles), comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.</p> <p>Date: _____</p> <p>Recipient Authorized Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

B.14 Sample Post-Delivery Certification of FMVSS Inapplicability

<u>POST-DELIVERY CERTIFICATION OF FMVSS INAPPLICABILITY</u>
<p>As required by 49 CFR part 663 – Subpart D, _____ (the recipient) certifies that it received, at the post-delivery stage, a statement from _____'s (the manufacturer) indicating that the vehicles _____ (number and description of vehicles), are not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in 49 CFR part 571.</p> <p>Date: _____</p> <p>Recipient Authorized Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p>

B.15 Sample Completed Vehicle FMVSS Sticker

MANUFACTURED BY (NAME)	
DATE: (MONTH/YEAR)	GVWR: (WEIGHT) LB
FRONT GAWR: (WEIGHT) LB WITH (SIZE) TIRES, (SIZE/TYPE) RIMS, AT PSI COLD (SINGLE/DUAL)	REAR GAWR: (WEIGHT) LB WITH (SIZE) TIRES, (SIZE/TYPE) RIMS, AT PSI COLD (SINGLE/DUAL)
<p>THIS VEHICLE CONFORMS TO ALL APPLICABLE U.S. FEDERAL MOTOR VEHICLE SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE.</p> <p>VIN: (VEHICLE IDENTIFICATION NUMBER)</p> <p>TYPE: (VEHICLE TYPE)</p>	

B.16 Sample Altered Vehicle Manufacturer's FMVSS Sticker

<p>THIS VEHICLE WAS ALTERED BY (NAME) IN (MONTH/YEAR) AND AS ALTERED, IT CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY STANDARDS AFFECTED BY THE ALTERATION AND IN EFFECT IN (MONTH/YEAR)</p>	
GVWR: (WEIGHT) LB	
FRONT GAWR: (WEIGHT) LB WITH (SIZE) TIRES, (SIZE/TYPE) RIMS, AT PSI COLD (SINGLE/DUAL)	REAR GAWR: (WEIGHT) LB WITH (SIZE) TIRES, (SIZE/TYPE) RIMS, AT PSI COLD (SINGLE/DUAL)
TYPE: (VEHICLE TYPE)	

B.17 Sample Incomplete Vehicle Manufacturer's FMVSS Sticker

THIS CHASSIS-CAB CONFORMS TO FEDERAL MOTOR VEHICLE SAFETY STANDARD NOS. (APPLICABLE FMVSS NUMBERS). THIS VEHICLE WILL CONFORM TO STANDARD NOS. (APPLICABLE FMVSS NUMBERS) IF IT IS COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS CONTAINED IN THE INCOMPLETE VEHICLE DOCUMENT FURNISHED PURSUANT TO 49 CFR PART 568. CONFORMITY TO THE OTHER SAFETY STANDARDS APPLICABLE TO THIS VEHICLE WHEN COMPLETED IS NOT SUBSTANTIALLY AFFECTED BY THE DESIGN OF THE CHASSIS-CAB.

CHASSIS-CAB MANUFACTURED BY (NAME).

(MONTH/YEAR)

B.18 Sample Intermediate Vehicle Manufacturer's FMVSS Sticker

WITH RESPECT TO STANDARD NOS. (APPLICABLE FMVSS NUMBERS), THE INSTRUCTIONS OF PRIOR MANUFACTURERS HAVE BEEN FOLLOWED SO THAT THE CHASSIS-CAB NOW CONFORMS TO THESE STANDARDS. THIS CHASSIS-CAB CONFORMS TO FEDERAL MOTOR VEHICLE SAFETY STANDARD NOS. (APPLICABLE FMVSS NUMBERS). WILL CONFORM TO STANDARD NOS. (APPLICABLE FMVSS NUMBERS) IF IT IS COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS CONTAINED IN THE AMENDED INCOMPLETE VEHICLE DOCUMENT FURNISHED PURSUANT TO 49 CFR PART 568. CONFORMITY TO STANDARD NOS. (APPLICABLE FMVSS NUMBERS) IS NO LONGER SUBSTANTIALLY AFFECTED BY THE DESIGN OF THIS CHASSIS-CAB.

INTERMEDIATE MANUFACTURE BY (NAME).

(MONTH/YEAR)

B.19 Samples of Final-Stage Vehicle Manufacturer's FMVSS Stickers

<p>MANUFACTURED BY (NAME). DATE: (MONTH/YEAR)</p> <p>INCOMPLETE VEHICLE MANUFACTURED BY (NAME). DATE: (MONTH/YEAR)</p>	
<p>GVWR: (WEIGHT) LB</p>	
<p>FRONT GAWR: (WEIGHT) LB WITH (SIZE) TIRES, (SIZE/TYPE) RIMS, AT PSI COLD (SINGLE/DUAL)</p>	<p>REAR GAWR: (WEIGHT) LB WITH (SIZE) TIRES, (SIZE/TYPE) RIMS, AT PSI COLD (SINGLE/DUAL)</p>
<p>CONFORMITY OF THE CHASSIS-CAB TO FEDERAL MOTOR VEHICLE SAFETY STANDARDS, WHICH HAVE BEEN PREVIOUSLY FULLY CERTIFIED BY THE INCOMPLETE VEHICLE MANUFACTURER OR INTERMEDIATE VEHICLE MANUFACTURER, HAS NOT BEEN AFFECTED BY FINAL-STAGE MANUFACTURE, THE VEHICLE HAS BEEN COMPLETED IN ACCORDANCE WITH THE PRIOR MANUFACTURER'S INSTRUCTIONS, WHERE APPLICABLE. THIS VEHICLE CONFORMS TO ALL OTHER APPLICABLE FEDERAL MOTOR VEHICLE SAFETY STANDARDS IN EFFECT IN (MONTH/YEAR).</p> <p>VIN: (VEHICLE IDENTIFICATION NUMBER)</p> <p>TYPE: (VEHICLE TYPE)</p>	

OR

<p>CONFORMITY OF THE CHASSIS-CAB TO FEDERAL MOTOR VEHICLE SAFETY STANDARD NOS. (APPLICABLE FMVSS NUMBERS) HAS NOT BEEN AFFECTED BY FINAL-STAGE MANUFACTURE. WITH RESPECT TO THE STANDARD NOS. (APPLICABLE FMVSS NUMBERS), THE VEHICLE HAS BEEN COMPLETED IN ACCORDANCE WITH THE PRIOR MANUFACTURER'S INSTRUCTIONS. THIS VEHICLE CONFORMS TO ALL OTHER APPLICABLE FEDERAL MOTOR VEHICLE SAFETY STANDARDS IN EFFECT IN (MONTH/YEAR).</p> <p>VIN: (VEHICLE IDENTIFICATION NUMBER)</p>
--

OR

<p>THIS VEHICLE CONFORMS TO ALL OTHER APPLICABLE FEDERAL MOTOR VEHICLE SAFETY STANDARDS IN EFFECT IN (MONTH/YEAR).</p> <p>VIN: (VEHICLE IDENTIFICATION NUMBER)</p> <p>TYPE: (VEHICLE TYPE)</p>

APPENDIX

C

Sample Buy America Audit Reports

C.1 Pre-Award Audit Reports

ABC TRANSIT AGENCY

ROLLING STOCK VEHICLE PROCUREMENT

Pre-Award Audit Report

Submitted By:

[Recipient and/or Consultant Information]

[Date]

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- 1.0 EXECUTIVE SUMMARY**
- 2.0 AUDIT PROCEDURES**
- 3.0 PRE-AWARD BUY AMERICA CERTIFICATION**
 - 3.1 Verification of Domestic Content Estimate and Final Assembly Cost
 - 3.2 Verification of Final Assembly Location and Activities
- 4.0 PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION**
 - 4.1 Verification of the Product as Described in the Specification
 - 4.2 Verification Manufacturer is Responsible with Capability and Capacity to Delivery the Product
- 5.0 FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS CERTIFICATION) (WHEN APPLICABLE)**
- 6.0 PRE-AWARD AUDIT CONCLUSIONS**

Attachments

- Pre-Award Buy America Certification
- Pre-Award Purchaser's Requirements Certification
- Table of Domestic Content

1.0 EXECUTIVE SUMMARY

Provide description of report including manufacturer, number and type of vehicles, and references to key FTA guidelines.

Provide statement about whether rolling stock vehicle manufacturer is compliant with Buy America pre-award audit requirements and whether the recipient has copies of the following

- i) Pre-Award Buy America Certification,
- ii) Pre-Award Purchaser's Requirements Certification, and
- iii) Pre-Award FMVSS Certification, if applicable.

Include a statement as to the organization of the report and any attachments. Provide a statement about whether the rolling stock vehicle manufacturer meets Buy America requirements.

2.0 AUDIT PROCEDURES

Provide a brief description of the procedures used to perform the overall audit, including whether in-house staff or consultants were used. Include a brief statement about Pre-Award Buy America documentation received from the rolling stock vehicle manufacturer, and provide a brief overview of the review and analysis performed to determine compliance with Buy America requirements, including any onsite visits to the rolling stock manufacturer or component supplier sites. Include a brief statement about procedures used to determine the validity of the Pre-Award Purchaser's Requirements Certification, including documentation reviewed and site visits, if any, performed to determine if the proposal meets the solicitation requirements. and that the rolling stock manufacturer is responsible, with the capability and capacity to produce the vehicle in compliance with the Contract Requirements.

3.0 PRE-AWARD BUY AMERICA CERTIFICATION

Provide a brief summary addressing the rolling stock vehicle manufacturer's Pre-Award Buy America documentation and how the manufacturer meets or does not meet the domestic content and final assembly requirements. Provide a brief summary of the documentation provided by the rolling stock vehicle manufacturer and reviewed by the recipient or its designated auditor.

3.1 Verification of Domestic Content and Final Assembly Cost

Provide a summary of the documentation provided by the manufacturer and confirm that the documentation included sufficient detail such that the reviewer was able to verify that the vehicle will contain the minimum domestic content and the final assembly costs.

The self-certification of the manufacturer of domestic content or compliance is not sufficient. The reviewer should examine documentation that inconcludes sufficient detail for the reviewer to determine whether the manufacturer is likely to meet the domestic content requirements.

Relevant information may include, but is not limited to, documentation of the breakdown of components, subcomponents, manufacture of origin, percent cost or actual cost of components, percent cost or actual cost of corresponding subcomponents, and whether the manufacturer has Buy America certifications from its suppliers. Provide a brief summary on the formulas and calculations used to determine domestic content and whether they are accurate. The Buy America pre-award audit report may include a summary table that lists the domestic components and their cost as a percentage of the total cost. The table should not include proprietary or confidential information.

Provide a summary statement of the manufacturer's claimed domestic content based on the independent analysis of the reviewer.

3.2 Verification of U.S. Final Assembly Location and Activities

Provide a brief description of the rolling stock vehicle manufacturer's proposed U.S. final assembly location and how the rolling stock vehicle manufacturer's final assembly activities will correspond to minimum final assembly activities in 49 CFR part 661. Provide a summary of the final assembly costs.

4.0 PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

Provide a summary addressing the manufacturer's Pre-Award Purchaser's Requirements Certification and the reviewer's methods of review and analysis to determine whether the requirements were satisfied. The summary may include a brief summary regarding how *ABC Transit Agency's* Evaluation Team reviewed the Manufacturer's Bid (Proposal), compared it to the solicitation specifications, and, after reviewing the manufacturer's bid, issued any addenda, received responses to clarifications, and found the Manufacturer to be compliant.

Additionally, the report may include a summary explaining how the recipient determined that the manufacturer is responsible. The summary may include, for example, a list of past deliveries of similar orders over the past 5 years. The summary also may indicate whether the manufacturer will use the same or similar processes and the same final assembly facility.

Provide a summary statement based on the above review as to whether or not the rolling stock manufacturer has the capacity and capability to produce the rolling stock to meet the contract requirements.

5.0 FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS CERTIFICATION) (IF APPLICABLE)

Provide a summary statement that a sample of the Manufacturer's FMVSS self-certification sticker information was obtained and reviewed against a sample FMVSS sticker and was found to include the content required for the Pre-Award Audit. (Ref. Appendix 6).

6.0 PRE-AWARD AUDIT CONCLUSION

Provide a summary regarding how the procedures used, analysis performed and results found on the Pre-Award audit of the rolling stock manufacturer indicates the manufacturer meets Buy America Compliance and the Purchaser's requirements certification.

ABC TRANSIT AGENCY

ROLLING STOCK VEHICLE PROCUREMENT
Post-Delivery Audit Report

Submitted By:

[Recipient and/or Consultant Information]

[Date]

A B C TRANSIT AGENCY NAME HERE
Post-Delivery Buy America Certification for (Rolling Stock Manufacturer Name Here)
<p><u>POST- DELIVERY BUY AMERICA CERTIFICATION</u> As required by 49 CFR part 663 – subpart C, (the recipient) certifies that it is satisfied that the rolling stock vehicles received, (number and description of rolling stock vehicles) from (the manufacturer), meet the requirements of 49 U.S.C. 5323(j). The recipient <input type="checkbox"/> , or its appointed auditor <input type="checkbox"/> (the auditor – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the rolling stock vehicles identified by manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for rolling stock vehicles, including a description of the activities that took place at the final assembly point and the cost of final assembly.</p>
Name: _____ Date: _____ Signature: _____ Title: _____
Post-Delivery Purchaser's Requirements Certification for (Rolling Stock Manufacturer Name Here)
<p><u>POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION</u> As required by 49 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 rolling stock, (number and description of the rolling stock). The inspector monitored manufacturing and completed a report on the manufacture of the rolling stock, and provided accurate records of all vehicle construction activities. The report addresses how the construction and operation of the rolling stock fulfill the contract specifications. After reviewing the report, visually inspecting the rolling stock, and performance testing the rolling stock, the recipient certifies that the rolling stock meets the contract specifications.</p>
Name: _____ Date: _____ Signature: _____ Title: _____

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4.0 POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION

 4.1 Assignment of Resident Inspector to Final Assembly Location and Rolling Stock Vehicle Manufacturer's Capability and Capacity

 4.2 Inspection Testing and Commissioning to Show Vehicles Fulfill Contract Specifications

5.0 FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS CERTIFICATION) (IF APPLICABLE)

6.0 POST-DELIVERY AUDIT CONCLUSIONS

APPENDICES

Appendix 1 Rolling Stock Vehicle Manufacturer's Post-Delivery Buy America Worksheet, Auditor's associated analysis and verification of final assembly cost

Appendix 2 Rolling Stock Vehicle Manufacturer's Buy America Certification

Appendix 3 Resident Inspector's Post-Delivery Purchaser's Requirements Report

1.0 EXECUTIVE SUMMARY

Provide a description of the report including manufacturer, number and type of vehicles, and references to key FTA guidelines.

Provide a statement about whether the rolling stock vehicle manufacturer is compliant with both (or all three) certifications; reference FTA regulations (49 CFR parts 661 and 663).

Provide a description of how the report is divided into two (or three) major sections in accordance with the regulation's requirements, namely:

- i) Post-Delivery Buy America Certification
- ii) Post-Delivery Purchaser's Requirements Certification
- iii) Post-Delivery FMVSS Certification (if applicable)

Include a statement about the appendices of the report containing the relevant attachments to support the two (or three) major sections.

Provide a statement as to whether the rolling stock vehicle manufacturer meets the requirements of 49 CFR part 663.

2.0 POST-DELIVERY AUDIT PROCEDURES

Provide a brief description of the procedures used to perform the overall audit, including whether recipient's staff or consultants were used. Include a brief statement about the Post-Delivery Buy America documentation received from the rolling stock vehicle manufacturer, and provide a brief overview of the review and analysis performed to determine compliance with Buy America Requirements, including onsite visits to the rolling stock manufacturer or component supplier sites. Include a brief statement about the procedures used to verify the Post-Delivery Purchaser's Requirements Certification, including the presence of a resident inspector and confirmation of receipt and review of the resident inspector's report, to determine compliance with Post-Delivery Purchaser's Requirements Certification.

3.0 POST-DELIVERY BUY AMERICA CERTIFICATION

Provide a brief summary addressing the rolling stock vehicle manufacturer's Post-Delivery Buy America documentation, and whether the manufacturer meets or does not meet the domestic content and final assembly requirements. Provide a brief summary of the documentation provided by the rolling stock vehicle manufacturer and reviewed by the recipient or its designated auditor.

3.1 Verification of Domestic Content and Final Assembly Cost

Provide a detailed summary of the auditor's review of the rolling stock vehicle manufacturer's Buy America worksheet and whether it includes all the typical components of the rolling stock being purchased per 49 CFR § 661.11. State the total % domestic content claimed by the rolling stock vehicle manufacturer.

Include information about the information and documentation reviewed by the auditor to verify the domestic content, including, but not limited to, whether information about the breakdown of components, subcomponents, manufacture of origin, percent cost or actual cost of components and percent cost or actual cost of corresponding subcomponents. Provide a brief summary about the formulas and calculations used to determine domestic content and whether it is accurate. Provide any other unique details about the manufacturer's Buy America worksheet. Provide a summary of the auditor's review of the bill of material and whether it was used to verify components. Provide a summary of the auditor's review of purchase orders or paid invoices of components and whether costs were traceable to the rolling stock manufacturer's Buy America domestic content worksheet.

Provide a brief summary about whether the manufacturer has signed certificates from component suppliers certifying U.S. content⁴⁶ and a statement about the sampling of the components supplier's certifications.

Provide a summary statement affirming the manufacturer's claimed domestic content based on the independent analysis. Provide a final statement about whether the Rolling Stock Manufacturer's Buy America Worksheet is accurate and documented.

3.2 Verification of U.S. Final Assembly Location and Activities

Provide a brief summary confirming the U.S. final assembly location and how final assembly activities correspond to minimum final assembly activities in 49 CFR § 661.11 Appendix D. Make reference to the Resident Inspector's report that details this information (as an Appendix).

4.0 POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION

Provide a summary that this section addresses the manufacturer's Post-Delivery Purchaser's Requirements Certification. Provide a brief summary on the methods of review and analysis to determine if the requirements were satisfied, including presence of the resident inspector, resident inspector's report, and verification and results of visual inspection and test sheets.

Provide a summary statement as to whether the Rolling Stock Vehicle Manufacturer meets the Post-Delivery Purchaser's Requirements, as stated in 49 CFR part 663 Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.

4.1 Assignment of Resident Inspector to Final Assembly Location; Verification of Manufacturer's Capability and Capacity

Provide a brief summary of the Resident Inspector's report and how it demonstrates the Rolling Stock Manufacturer's Capability and Capacity. Include information such as whether the resident inspector was at the facility full time or part time, the number of resident inspectors at the final assembly plant, and the type of inspections performed on vehicles as summarized in the resident inspector's report (Appendix 5). Provide a summary of quality assurance and control

⁴⁶ Note this is just a statement as to whether the manufacturer has obtained certificates from its suppliers; signed certificates from suppliers is not requirement, but is a recommended practice.

processes and whether the processes are consistent with the appropriate FTA elements of quality⁴⁷ (as an Appendix).

4.2 Inspection Testing and Commissioning to Show Vehicles Fulfill Contract Specifications

Provide a brief summary of key inspection, testing, test witnessing and commissioning activities as summarized in the resident inspector's report, making reference to sample inspection check sheets, testing procedures, reports, and examples of how the inspection and testing results meet the technical specification requirements (as an Appendix).

5.0 FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS CERTIFICATION) (IF APPLICABLE)

Provide a summary statement that the rolling stock vehicle manufacturer's actual FMVSS self-certification sticker information was obtained and reviewed against a sample FMVSS sticker and was found to include the content required for the Post-Delivery Audit. (Ref. Appendix 6).

6.0 POST-DELIVERY AUDIT CONCLUSION

Provide a summary regarding how the procedures used, analysis performed, and results found on Post-Delivery Audit of the rolling stock manufacturer indicate that the Buy America Compliance and the Purchaser's requirements certification have been satisfied.

⁴⁷ Available on FTA's website: <https://www.transit.dot.gov/funding/procurement/project-management-oversight-pmo>.



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