

Chapter 10

Buy America--- Requirements And Reporting

NOTES

CHAPTER 10 OVERVIEW

- ✓ Introduces transit providers to **Buy America Requirements**.
- ✓ Explains the application of the **Buy America Requirements** to Kansas transit providers.

A. Introduction to the Buy America Requirements

In order to foster the purchase and use of American-made products, Congress adopted Buy America requirements. Section 5323(j) provides that, with exceptions, Federal funds may not be obligated for mass transportation projects unless steel, iron, and manufactured products used in such projects are produced in the United States. Section 5310 and 5311 recipients and subrecipients must conform with FTA regulations relating to the procurement of transit vehicles. Buy America requirements apply to all purchases, including materials or supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000).

There are four exceptions to the Buy America requirement that may constitute the basis for a waiver from the statutory requirements. These exceptions include:

1. The requirement will not apply if its application is not in the public interest.
2. The requirement will not apply if materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality.
3. The requirement will not apply in a case involving the procurement of buses and other rolling stock if the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components and subcomponents of

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4. the vehicles or equipment, and if final assembly takes place in the United States.
5. The requirement will not apply if the inclusion of domestic material will increase overall project costs by more than 25 percent.

Requests for exemption from Buy America requirements regarding non-availability, price differential and public interest require FTA approval. Waiver of rolling stock and final assembly requirements do not. The FTA has issued a general waiver for selected items, including all purchases under the Federal small purchase threshold, currently \$100,000. Additionally, TEA-21 included a provision which allows a manufacturer or supplier to correct an incomplete certification of noncompliance after bid opening under certain circumstances if submission of the incorrect certification was the result of an inadvertent clerical error.

B. Application of the Buy America Requirements to Kansas Transit Providers

In Kansas, federal monies allocated for transit are dispersed to providers by the Kansas Department of Transportation (KDOT). KDOT requires providers who receive federal monies to display proof of compliance to the Buy America. Compliance with Buy America requirements occurs when the provider, upon purchase of a vehicle, signs a certification that the vehicle was either manufactured in America or is exempt from the Buy America requirements. KDOT will provide technical assistance to transit providers to determine whether the completion of a Buy America certification is necessary. Once completed, the certification of compliance must be kept in the transit agency's program files.

KDOT further requires that procurement of vehicles must be audited in accordance with the FTA regulation "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663. This requirement ensures that the purchase of rolling stock will be in compliance with bid specifications, Buy America requirements, and federal public safety requirements. Assurances of domestic

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content of the product, the components, and the sub-components in procurement of revenue rolling stock is also included in the certifications required by KDOT at the time the purchase of a vehicle is sought.

CHECKLIST

- Do the Buy America requirements apply to your organization? 10-1
- Is your organization exempt from the Buy America Requirements? 10-2
- How does KDOT administer the Buy America program when a vehicle is purchased? 10-2