

PURCHASING POLICY

RULES

AND

REGULATIONS



CITY OF CONROE

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City of Conroe

Purchasing Policy

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CITY OF CONROE
PURCHASING POLICY
RULES AND REGULATIONS

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INTRODUCTION

STATEMENT OF PURCHASING POLICY:

The Texas State Legislature has adopted Chapter 252 of the Texas Local Government Code, more commonly known as Purchasing and Contracting Authority of Municipalities, and Chapter 271, which contains authorization for cooperative purchasing as well as an alternate process for Public Works bidding. It shall be the policy of the City of Conroe, to fully comply in all respects with the rules, regulations and procedures of the appropriate governing authorities.

The City of Conroe Purchasing Department, as well as elected officials, department heads, and staff, pledge to discharge their duties in a manner that will provide, to all responsible vendors and contractors, an equitable and competitive access to the City's procurement process. Further, the Purchasing Department will be conducted in a manner that will promote public confidence in the integrity of the City of Conroe procurement organization.

PUBLIC PURCHASING:

Purchasing is one of the key functions in the success of any local government. The primary objective is to ensure the availability of equipment and materials as needed by the requesting department. This manual will outline the methods of procurement and the duties and responsibilities of the Purchasing Agent and Departments. The City of Conroe may purchase supplies, equipment, materials, and contracted services, where costs do not exceed \$50,000.00 without a formal, competitive, sealed bid. Much of what is written in this manual is governed by statutory requirements of either state or federal origin.

PUBLIC PURCHASING GOALS:

- ❑ Purchase the proper goods and services to suit the City's needs.
- ❑ Procure the best possible price for the goods or services required.
- ❑ Goods and services are available when and where they are needed.

PUBLIC PURCHASING MUST ASSURE THAT:

- ❑ Responsible bidders are given a fair opportunity to compete for the City's business.
- ❑ Public funds are safeguarded to ensure the best value is received for the public dollar.
- ❑ Guard against misappropriation of City funds.
- ❑ Public spending is not used to confer favors to anyone.

VALUE OF CENTRALIZED/DECENTRALIZED PURCHASING:

- ❑ It allows for the consolidation of smaller purchases by individual departments into larger volume purchases for the entire City, for greater cost savings
- ❑ The business community has a direct link to City procurement.
- ❑ Centralized knowledge and expertise places the purchasing function on a professional footing and inspires public confidence in the actions of the City.
- ❑ It does not remove the variety of choice on small purchases departments may wish to retain on items such as office supplies.

DEFINITIONS:

- ❑ Emergency purchases are made to meet a critical, unforeseen need of the City. The City's ability to serve the public would be impaired if purchases are not made immediately.
- ❑ Sole Source purchases are goods and services available from only one supplier; there may be just one vendor because of patents and copyrights, or simply because the vendor is the only one who supplies the goods and services.
- ❑ Services is the furnishing of skilled or unskilled labor or professional work. Examples are mowing and janitorial services.
- ❑ The Requisition is a request for a purchase to be made. It is the first step taken after the need for goods and services is recognized and meets the dollar amount criteria. This process must include a system of authorizations and safeguards to ensure that ethical purchasing procedures are followed.
- ❑ The Purchase Order constitutes a contract for the delivery of the goods or services in accordance with the terms of the agreement. This constitutes a legal document, and it usually contains the terms, quantity, delivery and price.
- ❑ A gift means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest.

SECTION I

CITY OF CONROE PURCHASING ETHICAL REQUIREMENTS RELATING TO MUNICIPAL PROCUREMENTS

PROCUREMENT REQUIREMENTS AND ETHICAL STANDARDS:

Chapter 176 of the Local Government Code states the ethics law that requires certain local government officials to disclose employment and business relationships with vendors who conduct business with local government entities. Please refer to Appendix B for review of Local Government Code 176.

GRATUITIES:

It shall be a breach of ethics to offer, give, or agree to give any employee or former employee of City of Conroe, or for any employee or former employee of City of Conroe to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other peculiar matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal, therefore, pending before this Local Government.

KICKBACKS:

It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for the City of Conroe, or any person associated therewith, as an inducement for the award of a subcontract or order.

CONTRACT CLAUSE:

The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation therefore.

It shall be a breach of ethics for any employee or former employee of the City of Conroe to knowingly use confidential information for actual or anticipated personal gain or for the actual or anticipated gain of any person.

*This Code of Ethics is taken in part from the
"Standard Financial Management System for Texas Cities and Counties
Model Purchasing Manual. "
And The
2012 Texas Municipal Procurement Laws Made Easy
[Link To Texas Procurement Laws Manual](#)*

SECTION II

THE REQUISITION PROCESS

GENERAL INFORMATION:

Purchasing procedures that are made with the intention of avoiding the competitive bidding requirements are in violation of State Law: (Purchasing and Contracting Authority of Municipalities Chapter 252.001). The following is a partial list of unacceptable practices:

- ❑ **COMPONENT PURCHASES:** Purchasing an item that, as a whole, would have normally been competitively bid, in a series of component purchases.
- ❑ **SEPARATE PURCHASES:** Purchasing an item in a series of separate purchases that would normally have been purchased in one purchase.
- ❑ **SEQUENTIAL PURCHASES:** Purchases made over a period of time that in normal purchasing practices would have been made as one purchase.

Any commitment to acquire goods or services without department approval and an authorized purchase order is prohibited. Anyone authorizing an expenditure of funds for goods or services prior to securing an approved purchase order may be held personally responsible for the payment.

DEPARTMENTAL PURCHASING RESPONSIBILITIES:

Departments should be cognizant of budget balances and refrain from forwarding requisitions to the Purchasing Department that would require expenditures in excess of those balances. The requisitioning department will have the ultimate responsibility for any purchases made that exceed their budget balance.

Departments should plan purchases in order to keep "rush" and "emergency" requisitions to a minimum. The City rarely enjoys any economic benefits from rush and emergency purchases. In most cases, prices for commodities and services are at a premium when there is not proper time allowed for the Purchasing Department to explore sources, options, and alternatives. The City of Conroe Purchasing Department is committed to expediting all purchase requisitions within a reasonable time frame.

To provide the Purchasing Department ample time to process purchase requests, departments should:

- Allow a one week turn around on all purchases requested that will meet or exceed \$3,000.00 but are less than \$50,000.00. Delivery times may vary, determined by availability.
- Allow a four to eight-week turn around on purchases that meet or exceed \$50,000.00. Delivery times will vary, determined by equipment availability.

Departments should review all purchase requests to assure they are descriptive and specific but do not prevent competitive bidding of comparable items.

The default receiving point will be the warehouse at the Service Center. Should a department desire a different receiving point, that department will be responsible for receiving its own commodities and services. The department should make the Purchasing Department aware of a shortage, late delivery, damaged merchandise, or any other problem relating to the vendor's performance and, if requested, follow-up with a written explanation of the situation.

HUB REQUIREMENTS:

HISTORICALLY UNDERUTILIZED BUSINESS REQUIREMENTS (HUB)

A HUB is defined as a business formed for the purpose of making a profit in which at least 51 percent of the business is owned, operated, and controlled by one or more persons who are economically disadvantaged and who have been historically underutilized because of their identification as members of certain ethnic groups. Eligible entities must have their principal place of business and permanent business office located in Texas where the majority of the HUB owner(s) make the decisions, control the daily operations of the organization, and participate in the business. The qualifying owners must be residents of the State of Texas.

Informal written quotations must be solicited from at least two registered HUB vendors located within Montgomery County for any expenditure of municipal funds which exceeds \$3,000.00 but is less than \$50,000.00

GRANT FUND PURCHASES

See Appendix C – Procedures for Preparing a Written Record of Procurement History

See Appendix D – Pre-Award and Post Award Audits for Bus Procurements

When making purchases with grant funds the City's purchasing policy does not prevail. Most grants are heavily regulated by specific policies and operational procedures. It is important to know which purchasing rules and policies to follow and how to clarify and resolve any conflicts within those rules and policies.

Local Governments are permitted to use their own purchasing policies and procedures as long as those policies are substantially similar to the federal standards. If there are areas of deficiency in the City policies, then the federal policies and procedures must take precedence.

All Grant Fund purchases will be competitively bid and contracts that are based on cost plus a percentage of cost will not be used for grant procurement. The City will review all selected Contractors against the Excluded Parties List System (www.sam.gov) and any vendor found on the Excluded Parties List will not be eligible for the award of grant funded projects.

If the goods and services are only available from a sole supplier a letter from the manufacturer is required stating that they do not distribute their product through distributors and any attempt to obtain bids would result in only one company being able to meet our specifications and needs.

Once these expenditures are purchased from federal funds the grant number shall be included on all paper work i.e.: requisition, purchase order, receiving documents, vendors invoice and capital asset forms.

REQUISITIONS (GENERAL):

Requisitioning is the formal request by a department for a purchase to be made after a need is recognized. Purchases of goods or services \$3,000.00 and over will *require* requisitions. The requisition will go through an approval process through Incode. After the Department Head and City Administrator has electronically approved the requisition, a purchase order will then be issued. The goods or services can then be ordered only after the purchase order process is complete.

If necessary, requisitions for services will include an accompanying memo or additional information in TCM from the requesting department that provides additional details regarding the required service and specifications. Requisitions should fully describe to the Purchasing Department what to buy, when it is required, where the product is to be delivered, or what service is to be performed.

COMPLETING THE REQUISITION:

Requisition Requests for the procurement of supplies, materials, equipment, repairs, and services will be created in Incode by the using department. The Purchasing Department will prioritize the requisition based on delivery requirements then take appropriate action.

It is the intention of the Purchasing Department to process all requests within a reasonable amount of time. If a request is to be held (i.e., vendor quotations, etc.) and cannot be processed within a reasonable time, the department will be notified.

REQUISITION INFORMATION:

The following information should be provided by the using department on each computer-generated requisition form:

- Department
- Date requested
- Date required (delivery date)
- Ship to code
- Recommended vendor & code
- Date approved by department director
- Comments (If vendor is new, provide: name, address, phone, contact person)
- Specific purpose
- Detailed description of item
- Quantity
- Unit of measure
- Unit cost (*If Not Known, Put a "Not to Exceed Amount"*)
- Amount of purchase
- Department head signature

SECTION III

STANDARD PURCHASE ORDERS

GENERAL INFORMATION:

Purchases requiring a requisition will be converted to a purchase order after the Requisition Request has been approved following the electronic approval path. Approval will be based on the requisition meeting the purchasing requirements outlined in this policy.

The Purchasing Department will print a purchase order from the computer-generated requisition.

STANDARD PURCHASE ORDERS:

- ❑ One copy of the purchase order is attached to the department's requisition and retained by the Finance Department.
- ❑ The requesting department will receive a copy from the Purchasing Department for its records or for use as a receiving document.
- ❑ Original invoices must be signed by the department and then forwarded to the Finance Department for payment.

CONTRACT / BLANKET PURCHASE ORDERS:

Annual Contract/Blanket purchase orders are agreements with vendors that allow frequent or small purchases by departments without continuously repeating the bidding process. Blanket Purchase Orders can also control pricing. Examples are copier leases, mowing services or ammunition purchases for the fiscal year.

PURCHASE ORDERS FOR TRAVEL TRAINING, SEMINARS, ETC.:

Competitive quotes are not required for expenses incurred in connection with training, seminars, memberships, subscriptions, travel, foods, or books less than \$50,000.00.

DOLLAR THRESHOLDS FOR PURCHASES:

The following schedule of dollar thresholds will determine the appropriate action that needs to be taken to complete the purchase. Information needed from a quote include: business name, contact person, price, date, warranty information, delivery, physical address and phone number. In all cases, an attempt will be made to obtain three quotes.

\$1.00 TO 499.99

- ❑ Oral Quotes. Each department will be responsible for associated paper work.

\$500.00 TO \$2,999.99

- ❑ Quotations may be solicited by telephone and documented. Each department shall be responsible for their purchases and associated paper work.

\$3,000.00 TO \$49,999.99

- ❑ Formal written quotations or proposals will be sought by the Purchasing Department with documentation recorded by the Purchasing Department, in some cases assistance will be required by the requesting department in obtaining quotes and developing technical specifications

PURCHASES EXCEEDING \$50,000.00

- ❑ Solicitation will be conducted by the formal, sealed, bid process, which is governed by statute. All purchases for materials and/or services in excess of \$50,000.00 must have the formal approval of City Council.

SECTION IV

RECEIVING MATERIALS

GENERAL INFORMATION:

When receiving ordered goods at a location other than the Warehouse, the user will conduct an initial inspection of the merchandise to determine its condition. The user will compare the goods received against the product specifications. Once the user has determined that the article(s) received are to the purchase order specifications and undamaged, the shipping ticket, or any other receiving documents, should be signed and returned to the Purchasing Department.

If freight is visibly damaged, receiving personnel should instruct the freight line driver /UPS to note the damage on the freight bill and sign it. Forward the freight bill/shipping ticket to the Purchasing Department.

All boxes and packing materials should be kept in the event of visible or concealed damage to freight shipments.

All materials and equipment not received or not in compliance with the specifications should be documented and reported to the Purchasing Department as soon as possible so that the vendor can be notified and instructed as to corrective action.

Damaged supplies, equipment, or materials should not be returned to the freight line or the vendor unless specifically requested by the vendor to do so.

Departments should contact the vendor, or the Purchasing Department, if materials and/or services are not received or performed by the due date. If the department contacts the vendor directly, they then should apprise the Purchasing Department of the situation.

Departments shall pay particular attention to the delivery ticket and how it matches the City's receiving copy. The employee receiving the materials must verify that all items were shipped as stated on the delivery ticket, then sign, IN INK, his/her full signature, printing same if illegible.

INCOMPLETE/PARTIAL ORDERS:

In the event an order is incomplete, the department should make an inquiry for scheduled shipment of the remaining order, or contact the Purchasing Department to make that inquiry.

Authorization for payment of a partial order is accomplished by signing the delivery ticket indicating the purchase order number, date, vendor and items received along with the original invoice.

SECTION V

PROCUREMENT OF PROFESSIONAL SERVICES

The "Professional Services Procurement Act" will govern the procurement of professional services.

All requests for professional services will be pre-approved by the City Administrator by memo for any amount. City Council is required to approve any contract for a professional service that will meet or exceed \$50,000.00.

Though competitive bids/quotes are not required, it will be the policy of the City of Conroe to procure, in all cases, professional services through a request for qualifications (RFQ) if the total fee for the professional service is expected to exceed \$50,000 for any project. Once the most qualified candidate is determined by a committee of at least three people and the Department Director, purchasing will then solicit proposals and negotiate fees.

SECTION VI

COMPETITIVE BIDS/PROPOSALS

GENERAL INFORMATION:

The term "Competitive Bidding" will be used in this manual, and is generally used in public purchasing, when the bidding process employed requires approval of a governing body such as City Council. Methods include Formal Bids, Request for Proposals or Request for Qualifications all of which will be determined by the Purchasing Department.

Competitive bidding allows available vendors to compete with each other to provide goods and/or services. In the case of local governments, the bidding process has two additional purposes. The first purpose of competitive bidding is to ensure that public monies are spent properly and legally, and that the best possible value is received. The second purpose is to give qualified and responsible vendors a fair and equitable opportunity to do business with the City.

The employment of a standard and a consistent bidding process provides the public with an assurance that their tax dollars are being spent properly.

With a few exceptions, competitive bidding of expenditures in excess of \$50,000.00 will be accomplished by the following:

- A complete specification and/or plans and drawings should be submitted to the Purchasing Department to request the item or service. Purchasing staff will assist with any specification if needed.
- The Purchasing Manager will contact the City Secretary and advertise the Request for Bids or Proposals.
- A “Notice to Bid” of the proposed purchase will be published.

Vendor volume in excess of \$50,000.00 is subject to review during audit. Cumulative expenditures for the budget year by vendor are reviewed for compliance with our competitive bidding practices.

BID / PROPOSAL EXCEPTIONS:

Before the award of a contract that requires an expenditure of more than \$50,000 the city must comply with the requirements of Local Government Code Chapter 252 for competitive sealed bidding or competitive sealed proposal requirements unless an exception to such requirements is authorized. Local Government Code § 252.022 contains the principle exceptions to these requirements. The exceptions to bidding include, but are not limited to:

- a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality’s residents or to preserve the property of the municipality. If the City seeks FEMA reimbursement, quotes and/or bids are required.
- a procurement necessary to preserve or protect the public health or safety of the municipality’s residents;
- a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
- a procurement for personal, professional, or planning services;
- a procurement for work that is performed and paid for by the day as the work progress;
- a purchase of land or right-of-way; and
- a procurement of items that are available from only one source.

Vendor volume in excess of \$50,000.00 is subject to review during audit. Cumulative expenditures for the budget year by vendor are reviewed for compliance with our competitive bidding practices.

EMERGENCY PURCHASES:

An emergency situation is commonly described as an unforeseen situation, which adversely and unduly affects the life, health, or convenience of the citizens of City of Conroe, or circumstances that would cause a loss to the City (such as, but not limited to, an inordinate amount of down time). If an emergency arises during normal working hours, the affected department director, or his/her authorized representative shall:

- ❑ Notify the Purchasing Department of the situation and possible cost, if known.
- ❑ Submit a requisition on that working day or, at the latest, the next working day, to the Purchasing Department noting the reason for the emergency.
- ❑ Document the circumstance of the emergency.

If an emergency should arise after regular hours, the department director or his/her authorized representative may proceed with the emergency acquisition. On the next regular day of business, a confirming requisition, invoice and properly completed receiving report (including a brief explanation of the purchase) will be sent to the Purchasing Department. The Purchasing Department will then assign a purchase order number and forward that number to the appropriate vendor.

SOLE SOURCE PURCHASES:

A sole source vendor implies that there is only one person or company that can provide the equipment needed and that any attempt to obtain bids would only result in one company being able to meet the required specifications.

These tests should be met:

- ✓ The company is the manufacturer.
- ✓ The company does not sell through distributors.
- ✓ Patents in force require the items to be proprietary to the manufacturer.
- ✓ Specifications cannot be relaxed to allow other companies to bid competitively.

A purchase or contract that is subject to City Council award on the basis of competitive bidding may not be awarded under the sole source exception to competitive bidding unless the recommendation for the award is accompanied by the Purchasing Agent's written statement of the reasons why the exception is applicable to the purchase.

A City Council agenda item for action on a sole source purchase or contract must include the words "sole source award". City Council action on a sole source purchase or contract must be separate from all other actions. A sole source purchase or contract may not be included on the consent agenda.

DISASTER RELATED PURCHASES:

A disaster is the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause. The existence of a local state of disaster is established by the Mayor through the issuance of a proclamation as provided by Texas Government Code § 418.108. A disaster declaration expires seven days after issuance of the proclamation unless it is renewed or extended. A declaration of local disaster may not be continued or renewed for a period of more than seven days without the consent of the City Council.

During a local state of disaster the Purchasing Department shall cooperate with the Emergency Management Coordinator to insure that the procurement process is coordinated with emergency operations. The Purchasing Department may suspend or modify normal purchasing procedures as necessary to rapidly secure equipment, goods and services that are required or suitable to respond to the emergency. The modifications to normal procedure shall be the least which are deemed necessary by the Purchasing Department in order to meet the demands of the emergency, but may specifically include the suspension of the notice and publication requirements of Texas Local Government Code § 252.041 applicable to procurements of more than \$50,000 that are subject to requirements for competitive sealed bidding or proposals.

Suspension of the notice and publication requirements for procurements in excess of \$50,000 does not eliminate the requirement to obtain competitive pricing unless the procurement is necessary to time sensitive emergency work that makes it clearly impractical to obtain informal bids. Where emergency demands make even informal bidding impractical a short-term non-competitive contract for site-specific emergency work may be warranted, however, the contract term should not exceed the time necessary to obtain competitive pricing on the basis of informal bids. Ordinarily non-competitive contracts may not be awarded more than 72 hours after the commencement of the state of disaster. If possible the Purchasing Department will contact at least three eligible vendors to obtain informal bids on procurements to which the competitive sealed bidding or proposal process would ordinarily apply. Informal bids may be obtained by phone, fax, email, or face to face solicitation. Informal bids need not be in writing, however, verbal offers will be immediately recorded by the Purchasing Department and a record of all informal bids will be maintained.

Contracts that are based on cost plus a percentage of cost shall not be used for the procurement of emergency work. Contractors listed on the Excluded Parties List System (www.sam.gov) will not be eligible for the award of emergency work.

The suspension of normal purchasing procedures during a local state of disaster does not authorize procurements by persons other than Purchasing Department staff. Unless authorized in advance by the City Administrator, all procurements over \$3,000.00 shall be processed by the Purchasing Department to insure compliance with this policy.

The Purchasing Department shall reinstate normal purchasing procedures as quickly as possible following the declaration of a local state of disaster. The suspension of normal purchasing procedures automatically terminates 7 days following the declaration of a disaster unless authority

to continue the suspension is specifically granted by the Mayor or City Council in any proclamation, resolution or ordinance authorizing the continuation of the local state of emergency for a period of time beyond 7 days.

BONDING:

Bids may be subjected to bonding requirements, per local government statutes. This is done to protect the City if the bidder attempts to withdraw after his bid is accepted.

COMPETITIVE BIDDING NOTICE:

A notice of a proposed purchase must be published two times, at least seven days apart, in a newspaper of general circulation in the County. The first day of publication should be *14* days before the date of the bid opening. The notice must include:

- ❑ The specifications describing the item to be purchased or a statement of where the specifications may be obtained.
- ❑ The time and place for receiving and opening bids and the name and position of the City official or employee to whom the bids are to be sent.

RECEIVING BID PROPOSALS:

All bids and proposals will be received by the City Secretary's Office on or before the time and date requested on the bid notice.

Bids received after the official bid opening time and/or date will be returned unopened to the bidder with a letter from the Purchasing Department notifying the bidder that the submitted bid/proposal was received subsequent to the due date and time.

On occasion, bids and proposals that are not clearly marked may be inadvertently opened. If this situation occurs, the bid will be re-sealed in front of a witness, and the occasion will be documented.

OPENING BID PROPOSALS:

Bids and/or proposals will be opened at the specified time (or shortly thereafter) and on the date specified in the notice. The date specified in the notice may be extended if circumstances warrant. Preliminary tabulation will be provided to the public when appropriate.

AWARDING A CONTRACT:

The Purchasing Department will evaluate all bids and provide a tabulation of the bid results. The department requesting the purchase will make their recommendation to the City Administrator to be placed on the City Council's agenda for approval. The Purchasing Department, after Council's approval, will supply the vendor with a purchase order and contracts as required.

Should a Contractor or Professional Services provider request a change in contract price, approvals shall be made prior to the beginning of the work covered by the proposed change. Such change will be authorized by a written change order prepared and approved by the Purchasing Department in consultation with the Department Director, followed by the consent of the City Administrator and/or City Council.

If two responsible bidders both submit the lowest and best bid, the City Council should award the bid according the best value to the City of Conroe.

SECTION VII

SPECIFICATIONS

GENERAL INFORMATION:

All well-written specifications are the product of a concentrated group effort and are worth preserving. They represent the fruits of lengthy deliberation and study combined with past experience. They are essential to any efficient purchasing program.

Specifications are a concise description of a good or service that the vendor must meet in order to be considered for the award. Specifications may include requirements for testing, inspection, preparation, or installation. Specifications are the total description of the purchase.

SPECIFICATION PURPOSE:

Good specifications have four major characteristics:

- **They set the minimum acceptability of the goods or services.** The term minimum acceptability is key. The vendor must know the minimum standard to determine what to provide. Too high a standard may mean tax dollars will be wasted. Too low a standard and the goods or services will not meet the expectations of the user.
- **They should promote competitive bidding.** A maximum number of responsible vendors should be able to bid on the specifications. Restrictive specifications decrease competition.

- **They should contain provisions for reasonable tests and inspections for acceptability of the goods or services.** The methods and timing of tests and inspections must be indicated in the specification. Whenever possible, tests should refer to nationally recognized practices and standards.
- **They should provide for an equitable award to the lowest responsible bidder.**

PREPARATION OF THE SPECIFICATIONS:

The user department along with help from the Purchasing Department should prepare the specifications. The final acceptance of the specifications rests with the Purchasing Department. This ensures proper quality control and avoids the proliferations of conflicting specifications in different departments of the City.

OBTAINING SPECIFICATIONS:

Existing specifications may be obtained from other local governments or the State Purchasing and General Services Division, Specifications and Inspections Section.

SPECIFICATION TYPES:

There are a number of types of specifications that are commonly used. The names may vary because of the source describing them. A single specification may be a combination of two or more of these types, especially the first two listed below. The following are the most commonly used terms:

- ❑ **Design Specifications:** These specifications give detailed descriptions of a good or service, including such things as details of construction or production, dimensions, chemical composition, physical properties, materials, ingredients, plus all other details needed for the provider to produce an item of minimum acceptability. Design specifications are usually required for construction projects, custom-produced items, and for many services.
- ❑ **Performance Specifications:** These specifications are used when the goods and/or services are described in terms of required performance. They may include such details as required power, strength of material, test methods and standards of acceptability, and recommended practices.
- ❑ **Combination Specifications:** These specifications contain elements of both design and performance specifications. Some features of each are included to allow a vendor to use ingenuity to meet the performance needs of the City and also to require certain necessary design characteristics. These are probably the most common type of specification.
- ❑ **Brand-Name Specifications:** These list a product or service by brand name, model, and other identifying specifics to limit the bidding to a single preferred product. Since this type

of specification discourages competition, it should not be used unless the item is the only one that will satisfy the City's requirement. This type of specification is used for purchasing replacement parts where only the brand name item will work.

- ❑ **Brand-Name or Equal Specifications:** These are similar to brand name specifications, except that products equal to the characteristics of the named brand are specified as acceptable.
- ❑ **Qualified Products List Specifications:** Specifications that are identified by manufacturers' names and model numbers and are the only items that are acceptable. These are used when quality is such a critical factor, and testing so lengthy, or expensive, that the City wants to stay with proven products.
- ❑ **Standard Specifications:** A single specification for one or more goods or services that have the same general purpose and are ordered on a recurring basis is a standard specification. The same specification is used each time an order is placed or bids are advertised. Examples are office supplies, paper, janitorial supplies and copier service contracts. Standardized specifications will usually be more complete and detailed than one-time specifications.

SAMPLE SPECIFICATION FORMAT:

Scope and Intent

- Scope: Explain title and summarize the application.
- Intent: State use of the item and using department.

Definitions and Applicable Documents

- Definitions: Define technical and critical terms where necessary.
- Applicable Documents: List and reference all documents referred to in this specification, including title, edition or issue number, the year of publication, and publisher or originating organization. If necessary, state where the document(s) can be located.

Requirements

- Performance Requirements and Characteristics: List all functional needs and performance requirements. Include work-related needs that the item must achieve.
- Design Features and Requirements: List all design requirements, including materials, manufacturing standards and directions, dimensions, physical characteristics of all kinds, and workmanship standards.
- Other Requirements: List any requirements not covered in the first sections.

Quality Assurance

- Test Requirements: List any testing requirements; include certifications, inspections, laboratory sampling, and other quality control requirements.
- Remedies and Penalties: List all remedies available to the government for noncompliance with specifications. Detail penalties to the provider for failure to perform or comply.

SECTION VIII

COPIER OR FAX SECURITY REQUIREMENT

OVERVIEW:

Departments should be aware when leasing or renting copier equipment of the eminent threat of data security breach. Since 2002 almost all copier equipment manufactured contains a computer hard drive whereby all information that is copied, scanned or faxed from these copiers is stored on a hard drive. Any copier (rented or purchased) must not leave the premises until the hard drives has been removed and given to the IT Department. This should be performed by the copier company or lease company. This should cover both termination of the contract or equipment being swapped/upgraded. All Police Department copiers must not leave the premises without either a 3 pass DOD wipe being performed on the drives or the drives destroyed or a certain for of encryption.

To ensure that all City employees responsible for making departmental purchases for leased copier equipment and to protect the security of confidential information the following guidelines have been established:

EXISTING LEASE OR RENTAL

- Prior to the end of the lease; consult the vendor regarding the purchase of the hard drive or;
- Contact vendor to see if Immediate Image Overwrite (IIO) or On Demand Image Overwrite (ODIO) software can be purchased and added to copier

NEW LEASE OR RENTAL

- Inquire if Immediate Image overwrite (IIO) or On Demand Image Overwrite (ODIO) software can be purchased or;
- Add an addendum to the contract to have the vendor erase the hard drive upon termination of lease or;
- Inquire of the vendor as to the option that the hard drive can be purchased upon termination of lease.

SECTION IX

PROCUREMENT CARD USE

OVERVIEW:

This policy provides an overview of the procurement card program as well as the range of related procedures and forms associated with the program. The purpose of the purchasing card program is to establish a more efficient, cost-effective method of purchasing. The program was designed as an alternative to the traditional purchasing process for supplies, materials and travel. The purchasing card can be used with any supplier that accepts the designated bank card as a form of payment.

Procurement cardholders shall conform to the City of Conroe Purchasing Policy and Travel and Training Policy, as well as State purchasing laws when using the purchasing card program. Any procurement card misuse is to be reported to the Assistant City Administrator/CFO, City Administrator, Mayor and Council or police authorities, as necessary.

CARDHOLDER RESPONSIBILITIES:

Inappropriate procurement card use can result in significant losses for an organization, so the designation of their use is a serious matter. Users are expected to use these cards with the highest sense of ethics. The following rules apply to users of city purchasing cards:

- Do not use procurement cards for personal transactions.
- Do not use your card on unsecure websites. Before you type your card details into a website, ensure that the site is secure. Look out for a small padlock symbol in the address bar (or elsewhere in your browser window) and a web address beginning with https:// (the “s” stands for 'secure').
- Do not share the card information with any unauthorized person.
- Do not receive cash back for procurement card credit transactions. All credits must be processed through the purchasing card.
- Employees utilizing a City purchasing card should make every effort to obtain a sales tax exemption form prior to making a purchase to avoid paying sales tax.
- Ensure adherence in complying with the purchasing restrictions, such as not splitting charges into smaller amounts to avoid obtaining formal quotes with the Purchasing Department.
- When using the procurement card to pay for business-related meals, provide documentation detailing the purpose of the meeting and the names of all individuals participating.
- Promptly report transaction discrepancies or a lost procurement card to the processing bank and also the procurement card manager (PCM).

- Improper use of purchasing cards will result in revocation of one's card and possible additional disciplinary action up to and including termination and/or criminal prosecution.
- Obtain an itemized receipt for all transactions. Receipts are to provide the date, time, transaction identification, each item purchased, and the transaction total. The purpose of the transaction must be documented.
- Appropriate documentation for gift cards would include the purpose of the gift card, the gift card recipient, the gift card number and the gift card value. Any gift card to an employee of the City must be reported to the Payroll Clerk for appropriate processing.
- Promptly process monthly account statements. Ensure all documentation related to the account statement and the associated transactions is electronically attached to the Accounts Payable file and all such documents are readable.

DEPARTMENT RESPONSIBILITIES

Departments are responsible for monitoring procurement cardholders and purchasing activities. The following rules apply to department personnel.

- Carefully review the necessity for cardholders, based on department and position needs, prior to requesting the issuance of a procurement card from the Procurement Card Manager (PCM). Department Directors are to follow the guidelines established by the PCM for making such requests.
- Departments shall monitor procurement card usage to ensure cards are being used appropriately and under the guidelines of this policy.
- Departments shall monitor the results of disputed transaction charges to ensure the City receives credit for items for which it is not responsible.
- Ensure the PCM is promptly notified of a transferring or departing employee, so the procurement card may immediately be cancelled.
- Should a cardholder be put on administrative leave, the PCM is to be promptly notified, so the procurement card may immediately be put on hold status.

PROCUREMENT CARD MANAGER (PCM) RESPONSIBILITIES:

The procurement card program is managed by the procurement card manager (PCM) in the Finance Department. The Accounts Payable Clerk has been designated the PCM in the Finance department. The Accounts Payable Clerk has been designated the PCM in the Finance Department. This position is responsible for a payment method that may cover large amounts of City expenditures; for that reason, this is a highly responsible position. The following rules apply to the PCM:

- Maintain day-to-day administration of the procurement card program.
- Ensure the correct cardholder authorization information is obtained from the department director and properly maintain all corresponding documentation.

- Ensure procurement cards for departing or transferring employees are properly cancelled upon notification by Human Resources, the associated department directors, or the department director appointee.
- Ensure procurement cards for cardholders on administrative leave are properly put on hold status upon notification by Human Resources, the associated department director, or the department director appointee.
- Maintain a complete list or have access to online information of cardholders, their limits and any other details specific to their card assignment.

PROCUREMENT CARD USAGE WHILE TRAVELING:

- No expenses shall be duplicated in conjunction with any type of city disbursement.
- The procurement card should not be used for meals if a per diem has been, or will be, paid as part of any travel or training advance or reimbursement.
- Itemized receipts are to be attached to both the procurement card statement and the travel voucher.
- Total meals charged using a procurement card should not exceed the daily per diem without express approval.

MONTHLY STATEMENT RECONCILIATION:

This procedure must be used by City employees to reconcile the monthly procurement card statement.

1. A procurement card account statement will be received each month (for each individual card) according to the billing cycle assigned by the bank card supplier. Receipt may be via U.S. postal service, email or online PDF.
2. Compare the line items on the statement to your receipts.
3. If any receipts are missing, contact the supplier and attempt to obtain a replacement receipt.
4. If any receipts are still missing, list them individually on a Procurement Card Missing Receipt form (Attachment A), obtained from the Procurement Card Manager (PCM). Complete the form as indicated. The cardholder will sign the form to certify that the expenditures with missing receipts were legitimate business expenses. This form must also be signed by the department director.
5. Repetitive loss of receipts by a cardholder will result in loss of procurement card privileges.
6. Once the statement has been reconciled, an accounts payable packet will be initiated following standard accounting procedures. Ensure all documentation is properly attached in the electronic file and all such records are readable.
7. Appropriate persons are to review and approve monthly procurement card statements and the associated documentation via the electronic accounts payable process. These accounts payable batches are to be approved as soon as possible and no later than two weeks from the statement date.

STATEMENT APPROVAL REQUIREMENTS:

This process dictates the necessary minimum approval of the payment of monthly statements for each level of cardholder.

1. Employee cardholder statements will be approved by their department director.
2. Department director statements will be approved by the City Administrator.
3. The City Administrator will obtain approval from the Mayor for purchases made by credit card for City business and paid for with City funds.

OTHER CREDIT CARDS:

This refers to other bank issued, department store issued, and/or any other type credit cards.

- No credit cards of any type shall be applied for, or accepted, without the written consent of the Assistant City Administrator/CFO.

APPENDIX B

LOCAL GOVERNMENT CODE 176 AFTER H.B. 23

TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES

SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION

Section 176.001. DEFINITIONS. In this chapter:

- (1) "**Agent**" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee.
- (1-a) "**Business relationship**" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) A transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
 - (B) A transaction conducted at a price and subject to terms available to the public; or
 - (C) A purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.
- (1-b) "**Charter school**" means an open-enrollment charter school operating under Subchapter D, Chapter 12, Education Code.
- (1-c) "**Commission**" means the Texas Ethics Commission.
- (1-d) "**Contract**" means a written agreement for the sale or purchase of real property, goods, or services.
- (2) "**Family member**" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code.
- (2-a) "**Family relationship**" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.
- (2-b) "**Gift**" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.
- (2-c) "**Goods**" means personal property.
- (2-d) "**Investment income**" means dividends, capital gains, or interest income generated from:
- (A) a personal or business:
 - (i) checking or savings account;

- (ii) share draft or share account; or
 - (iii) other similar account;
 - (B) a personal or business investment; or
 - (C) a personal or business loan.
- (3) "**Local governmental entity**" means a county, municipality, school district, charter school, junior college district, water district created under Subchapter B, Chapter 49, Water Code, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.
- (4) "**Local government officer**" means:
- (A) a member of the governing body of a local governmental entity;
 - (B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or
 - (C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.
- (5) "**Records administrator**" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity or another person designated by the local governmental entity to maintain statements and questionnaires filed under this chapter and perform related functions.
- (6) "**Services**" means skilled or unskilled labor or professional services, as defined by Section 2254.002, Government Code.

- (7) **"Vendor"** means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Section 1, Effective June 18, 2005.

Amended by: Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Section 1, Effective May 25, 2007.

Amended by: Acts 2015, 84th Leg., R.S., Ch. 989 (H.B.23), Section 1, Effective September 1, 2015.

Section 176.002. APPLICABILITY TO VENDORS AND OTHER PERSONS.

(a) This chapter applies to a person who is:

- (1) a vendor; or
- (2) a local government officer of a local governmental entity.

(b) A person is not subject to the disclosure requirements of this chapter if the person is:

- (1) a state, a political subdivision of a state, the federal government, or a foreign government; or
- (2) an employee or agent of an entity described by Subdivision (1), acting in the employee's or agent's official capacity.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Section 1, Effective June 18, 2005.

Amended by: Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Section 2, Effective May 25, 2007.

Amended by: Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Section 2, Effective September 1, 2015.

Amended by: Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Section 3, Effective September 1, 2015.

Section 176.003. CONFLICTS DISCLOSURE STATEMENT REQUIRED.

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (1) the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor; or
 - (C) has a family relationship with the local government officer.
- (a-1) A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:
 - (1) a political contribution as defined by Title 15, Election Code; or

(2) food accepted as a guest.

(a-2) A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013, Government Code.

(b) A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

(c) **Repealed** by Acts 2015, 84th Leg., R.S., Ch. 989, Section 9(1), Effective September 1, 2015.

(d) **Repealed** by Acts 2015, 84th Leg., R.S., Ch. 989, Section 9(1), Effective September 1, 2015.

(e) The commission shall adopt the conflicts disclosure statement for local government officers for use under this section. The conflicts disclosure statement must include:

(1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Subsection (a) (2) (A), including the nature and extent of the relationship; and

(B) gifts accepted by the local government officer and any family member of the officer from a vendor during the 12-month period described by Subsection (a) (2) (B) if the aggregate value of the gifts accepted by the officer or a family member from that vendor exceeds \$100;

(2) an acknowledgment from the local government officer that:

(A) the disclosure applies to each family member of the officer; and

(B) the statement covers the 12-month period described by Subsection (a) (2) (B); and

- (3) the signature of the local government officer acknowledging that the statement is made under oath under penalty of perjury.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Section 1, Effective June 18, 2005.

Amended by: Acts 2007, 80th Leg., R.S., Ch.226 (H.B. 1491), Section 3, Effective May 25, 2007.

Amended by: Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Section 4, Effective September 1, 2015.

Amended by: Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Section 5, Effective September 1, 2015.

Amended by: Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Section 9(1), Effective September 1, 2015.

Section 176.004.

Section 176.005.

Section 176.006. DISCLOSURE REQUIREMENTS FOR VENDORS AND OTHER PERSONS; QUESTIONNAIRE.

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
- (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.
- (b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a vendor's business and family relationships with a local governmental entity.
- (c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the vendor filing the questionnaire:
 - (1) describe each employment or business and family relationship the vendor has with each local government officer of the local governmental entity;
 - (2) identify each employment or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income, other than investment income, from the vendor;
 - (3) identify each employment or business relationship described by Subdivision (1) with respect to which the vendor receives, or is likely to receive, taxable income, other than investment income, that:

- (A) is received from, or at the direction of, a local government officer of the local governmental entity; and
 - (B) is not received from the local governmental entity; and
- (4) describe each employment or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:
- (A) serves as an officer or director; or
 - (B) holds an ownership interest of one percent or more.
- (d) A vendor shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate.
- (e) A person who is both a local government officer and a vendor of a local governmental entity is required to file the questionnaire required by Subsection (a) (1) only if the person:
- (1) enters or seeks to enter into a contract with the local governmental entity; or
 - (2) is an agent of a person who enters or seeks to enter into a contract with the local governmental entity.
- (f) **Repealed** by Acts 2015, 84th Leg., R.S., Ch. 989, Section 9(3), Effective September 1, 2015.
- (g) **Repealed** by Acts 2015, 84th Leg., R.S., Ch. 989, Section 9(3), Effective September 1, 2015.
- (h) **Repealed** by Acts 2015, 84th Leg., R.S., Ch. 989, Section 9(3), Effective September 1, 2015.
- (i) The validity of a contract between a vendor and a local governmental entity is not affected solely because the vendor fails to comply with this section.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Section 1, Effective June 18, 2005.

Amended by: Acts 2007, 80th Leg., R.S., Ch.226 (H.B. 1491), Section 6, Effective May 25, 2007.

Amended by: Acts 2007, 80th Leg., R.S., Ch.226 (H.B. 1491), Section 9, Effective May 25, 2007.

Amended by: Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Section 15.005, Effective September 1, 2009.

Amended by: Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Section 6, Effective September 1, 2015.

Amended by: Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Section 9(3), Effective September 1, 2015.

Section 176.0065. MAINTENANCE OF RECORDS. A records administrator shall:

- (1) maintain a list of local government officers of the local governmental entity and shall make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Section 176.006; and
- (2) maintain the statements and questionnaires that are required to be filed under this chapter in accordance with the local governmental entity's records retention schedule.

Added by Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Section 8, Effective May 25, 2007.

Re-designated and amended from Local Government Code, Section 176.011 by Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Section 7, Effective September 1, 2015.

Section 176.007.

Section 176.008. ELECTRONIC FILING. The requirements of this chapter, including signature requirements, may be satisfied by electronic filing in a form approved by the commission.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Section 1, Effective June 18, 2005.

Section 176.009. POSTING ON INTERNET.

- (a) A local governmental entity that maintains an Internet website shall provide access to the statements and to questionnaires required to be filed under this chapter on that website. This subsection does not require a local governmental entity to maintain an Internet website.
- (b) **Repealed** by Acts 2013, 83rd Leg., R.S., Ch. 847, Section 3(b), Effective January 1, 2014.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Section 1, Effective June 18, 2005.

Amended by: Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Section 7, Effective May 25, 2007.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Section 76, Effective September 1, 2011.

Amended by: Acts 2013, 83rd Leg., R.S., Ch. 847 (H.B. 195), Section 3(b), Effective January 1, 2014.

Section 176.010. REQUIREMENTS CUMULATIVE. The requirements of this chapter are in addition to any other disclosure required by law.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Section 1, Effective June 18, 2005.

Section 176.011.

Section 176.012. APPLICATION OF PUBLIC INFORMATION LAW. This chapter does not require a local governmental entity to disclose any information that is excepted from disclosure by Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 226 (H.B.1491), Section 8, Effective May 25, 2007.

Section 176.013. ENFORCEMENT.

- (a) A local government officer commits an offense under this chapter if the officer:
 - (1) is required to file a conflicts disclosure statement under Section 176.003; and
 - (2) knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not

later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

- (b) A vendor commits an offense under this chapter if the vendor:
 - (1) is required to file a conflict of interest questionnaire under Section 176.006; and
 - (2) either:
 - (A) knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of the facts that require the filing of the questionnaire; or
 - (B) knowingly fails to file an updated questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in a questionnaire previously filed by the vendor incomplete or inaccurate.
- (c) An offense under this chapter is:
 - (1) a Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;
 - (2) a Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or
 - (3) a Class A misdemeanor if the contract amount is at least \$5 million.
- (d) A local governmental entity may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this chapter.
- (e) The governing body of a local governmental entity may, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a conflict of interest questionnaire required by Section 176.006.

- (f) It is an exception to the application of Subsection (a) that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after the date the officer received notice from the local governmental entity of the alleged violation.
- (g) It is an exception to the application of Subsection (b) that the vendor filed the required questionnaire not later than the seventh business day after the date the vendor received notice from the local governmental entity of the alleged violation.

Added by Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Section 8, Effective September 1, 2015

Appendix C

Procedure for Preparing a Written Record of Procurement History

The City of Conroe (City) is required to prepare, maintain, and distribute a Procurement History, as a part of complying with the Common Grant Rules. The City will prepare a written record of procurement history for every FTA-assisted procurement during the procurement preparation and planning process and update the procurement history during the pre-award process. At a minimum, the procurement history will detail the history of each procurement as follows:

- The rationale for the method of procurement, including a sole source justification for any acquisition that does not qualify as competitive (preparation/planning);
- The reason(s) for selection of contract type (preparation/planning);
- The reasons for contractor selection or rejection, including a justification for each noncompetitive award (preparation/planning and pre-award);
- The basis for the contract price (preparation/planning and pre-award); and
- Documentation appropriate for the size and complexity of the procurement.

City staff will consider the following guidance when preparing the written record of procurement history. The guidance is based on the requirements of the Common Grant Rule for governmental recipients, supplemented by FTA policies that address the needs of FTA recipients and the requirements of State procurement law.

Procurement Method

1. Micro-Purchases. Consistent with the Federal Acquisition Regulation (FAR), FTA considers micro-purchases to be those purchases of \$3,500 or less.

- a. When Appropriate. If permitted by State and local law, the recipient may acquire property and services valued at \$3,500 or less without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures. FTA does not intend to imply that the recipient must treat any purchase of \$3,500 or less as a micro-purchase. The recipient may set lower thresholds for micro-purchases in compliance with State and local law, or otherwise as it considers appropriate.
 - b. Procedures. The following procedures apply to micro-purchases:
 - (a) Competition. The recipient should distribute micro-purchases equitably among qualified suppliers.
 - (b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.
 - (c) Documentation. FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.
2. Small Purchases. The Common Grant Rule for governmental recipients authorizes governmental recipients to use relatively simple and informal small purchase procedures as follows; **however, the State of Texas currently limits the threshold for simplified acquisition (small purchases) to \$50,000:**
- a. When Appropriate. Small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro-purchase threshold (currently, \$3,000) but less than the Federal simplified acquisition threshold at 41 U.S.C. Section 403(11), currently \$150,000. (FTA recognizes the small purchase threshold to be the same as the simplified acquisition threshold.) *Also see*, Chapter II, Subsection 3.b. These purchases are also exempt from FTA's Buy America requirements. FTA does not intend to imply that any purchase of \$150,000 or less must be treated as a small purchase. The recipient may set lower thresholds for small purchases in compliance with State and local law, or otherwise as it considers appropriate.
 - b. Procedures. When using small purchase procedures:
 - (a) Competition. The recipient must obtain price or rate quotations from an adequate number of qualified sources.
 - (b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.

3. Sealed Bids (Formal Advertising). The Common Grant Rule for governmental recipients acknowledges sealed bidding to be a generally accepted procurement method in which bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lowest in price.
 - a. When Appropriate. The Common Grant Rule for government recipients states a preference for the sealed bids procurement method for acquiring property, construction, and other services. Sealed bid procurements should be used when the following circumstances are present:
 - (a) Precise Specifications. A complete, adequate, precise, and realistic specification or purchase description is available.
 - (b) Adequate Sources. Two or more responsible bidders are willing and able to compete effectively for the business.
 - (c) Fixed Price Contract. The procurement generally lends itself to a firm fixed price contract.
 - (d) Price Determinative. The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations discussed in later sections of this Chapter, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
 - (e) Discussions Unnecessary. Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone. This contrasts with Competitive Proposal procedures in which discussions with individual offerors are expected to be necessary and may take place at any time after receipt of proposals. However, a pre-bid conference with prospective bidders before bids have been received can be useful.
 - b. Procurement Procedures. The following procedures apply to sealed bid procurements:
 - (a) Publicity. The invitation for bids is publicly advertised. In the state of Texas, the City is required to advertise the solicitation once each week for at least two weeks before the deadline for receiving bids, proposals, or responses.
 - (b) Adequate Sources. Bids are solicited from an adequate number of known suppliers.
 - (c) Adequate Specifications. The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
 - (d) Sufficient Time. Bidders are allowed sufficient time to prepare bids before the date of bid opening.

- (e) Public Opening. All bids are publicly opened at the time and place prescribed in the invitation for bids.
 - (f) Fixed Price Contract. A firm fixed price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.
 - (g) Rejection of Bids. Any or all bids may be rejected if there is a sound, documented business reason.
- c. FTA strongly encourages non-governmental recipients to use similar procedures.
4. Competitive Proposals (Request for Proposals). The Common Grant Rule for governmental recipients acknowledges the use of competitive proposals to be a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and the recipient expects that more than one source will be willing and able to submit an offer or proposal.
- a. When Appropriate. Competitive proposals should be used when any of the following circumstances are present:
 - (a) Type of Specifications. The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.
 - (b) Uncertain Number of Sources. Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and the recipient lacks the authority or flexibility under State or local law to negotiate the contract price if it receives only a single bid.
 - (c) Price Alone Not Determinative. Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the recipient's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.
 - (d) Discussions Expected. Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals. This contrasts with Sealed Bids (Formal Advertising) procedures in which

discussions with individual bidders are not likely to be necessary, as award of the contract will be made based on price and price-related factors alone.

- b. Procurement Procedures. The following procedures apply to procurements by competitive proposals:
 - (a) Publicity. The request for proposals is publicly advertised.
 - (b) Evaluation Factors. All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.
 - (c) Adequate Sources. Proposals are solicited from an adequate number of qualified sources.
 - (d) Evaluation Method. A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
 - (e) Price and Other Factors. An award is made to the responsible offeror whose proposal is most advantageous to the recipient's program with price and other factors considered.
 - (f) Best Value. If permitted under its State or local law, the recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient. To do so, the recipient's solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The recipient should base its determination of which proposal represents the "best value" on an analysis of the tradeoff of qualitative technical factors and price or cost factors. Apart from the statutory requirement that the contract must support the recipient's public transportation project consistent with applicable Federal laws and regulations, FTA does not require any specific factors or analytic process.
 - c. FTA strongly encourages non-governmental recipients to use similar procedures.
5. Two-Step Procurement Procedures. If permitted by State and local law, the recipient may use two-step procurement procedures in both sealed bid and competitively negotiated procurements, provided the opportunity for full and open competition is retained.
- a. Review of Technical Qualifications and Approach. The first step is a review of the prospective contractors' technical approach to the recipient's request and technical qualifications to carry out that approach. The recipient then may narrow the competitive range to prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.

- b. Review of Bids and Proposals Submitted by Qualified Prospective Contractors. The second step consists of soliciting and reviewing complete bids (sometimes referred to as “two-step sealed bidding”) or proposals (as in “competitive negotiations”), including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, the recipient should attempt to solicit bids or proposals from at least three qualified prospective contractors. Unlike qualifications-based procurement procedures required for A&E services, and other contracts covered by 49 U.S.C. Section 5325(b) discussed in subsection 3.f of this Chapter, FTA expects the recipient to consider all bid or proposal prices submitted as well as other technical factors, rather than limiting reviews to the most qualified bidder or offeror.
6. Architectural Engineering (A&E) Services and Other Services. The City will comply with Texas Government Code Title 10, General Government, Subtitle F, State and Local Contracts and Fund Management, Chapter 2254, Professional and Consulting Services, Subchapter A, Professional Services, to acquire A&E services and/or program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services as they directly connect to, directly relate to, or lead to construction, alteration, or repair of real property. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used as described below. The State adopted the law before August 10, 2005 and it is to FTA’s enabling legislation at 49 U.S.C. Section 5325(b) (1), which requires the use of the qualifications-based procurement procedures contained in the “Brooks Act,” 40 U.S.C. Sections 1101 through 1104.
- a. Qualifications-Based Procurement Procedures Required. The recipient must use qualifications-based procurement procedures not only when contracting for A&E services, but also for other services listed in 49 U.S.C. Section 5325(b)(1) that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. For example, a contractor performing program management, project design, construction management, or engineering services in which that contractor would select the finished products to be acquired for an FTA assisted construction project must be selected through qualifications-based procurement procedures.
- b. Qualifications-Based Procurement Procedures Prohibited. Unless FTA determines otherwise in writing, a recipient may not use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Even if a contractor has performed services listed herein in support of a construction, alteration, or repair project involving real property, selection of that contractor to perform similar services not relating to construction may not be made through the use of qualifications-based procurement procedures.

- (a) A project involving construction does not always require that qualifications-based procurement procedures be used. Whether or not qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project. For example, the design or fabrication of message signs, signals, movable barriers, and similar property that will become off-the-shelf items or will be fabricated and delivered as final end products for installation in an FTA assisted construction project are not services for which qualifications-based procurement procedures may be used. Nor is actual construction, alteration, or repair to real property the type of services for which qualifications-based procurement procedures may be used.
- c. Qualifications-Based Procurement Procedures. The following procedures apply to qualifications-based procurements:
 - (a) Qualifications. Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.
 - (b) Price. Price is excluded as an evaluation factor.
 - (c) Most Qualified. Negotiations are first conducted with only the most qualified offeror.
 - (d) Next Most Qualified. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.
 - (e) Effect of State Laws. To the extent that a State has, before August 10, 2005, adopted by law, an equivalent State qualifications-based-procurement requirement for acquiring architectural, engineering, and design services, State procedures, rather than Federal "Brooks Act" procedures (40 U.S.C. Sections 1101 through 1104), may be used.
- d. Audits and Indirect Costs. As required by 49 U.S.C. Section 5325(b)(2), the following requirements apply to a third party contract for program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services:
 - (a) Performance of Audits. The third party contract or subcontract must be performed and audited in compliance with FAR Part 31 cost principles.
 - (b) Indirect Cost Rates. The recipient and the third party contractor, its subcontractors and subrecipients, if any, must accept FAR indirect cost rates for the one-year applicable accounting periods established by a cognizant Federal or State government agency, if those rates are not currently under dispute.

- (c) Application of Rates. After a firm's indirect cost rates established as described in subparagraph 3.f(4)(b) above are accepted, those rates will apply for purposes of contract estimation, negotiation, administration, reporting, and payments, not limited by administrative or de facto ceilings.
 - (d) Pre-notification; Confidentiality of Data. Before requesting or using cost or rate data described in subparagraph 3.f(4)(c) above, a recipient must notify the affected firm(s). That data must be kept confidential and may not be accessible by or provided by the agency or group of agencies that share cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, that cost and rate data may not be disclosed under any circumstances. FTA recognizes that many States have "Open Records" laws that may make it difficult to maintain confidential cost or rate data. As a result, before requesting or using a firm's cost or rate data, not only should a recipient notify the affected firm, but it must also obtain permission to provide that data in response to a valid request under applicable State law. The confidentiality requirements of 49 U.S.C. 5325(b)(2)(D) cannot be waived, even if those confidentiality requirements conflict with State law or regulations.
7. Design-Bid-Build. The design-bid-build procurement method requires separate contracts for design services and for construction.
- a. Design Services. For design services, the recipient must use qualifications-based procurement procedures, in compliance with applicable Federal, State and local law and regulations.
 - b. Construction. Because the recipient may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, the recipient generally must use competitive procedures for the construction. These may include sealed bidding or competitive negotiation procurement methods, as appropriate.
8. Design-Build. The design-build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction. FTA's enabling legislation expressly authorizes the use of FTA capital assistance to support design-build projects "after the recipient complies with Government requirements," 49 U.S.C. Section 5325(d)(2).
- a. Procurement Method Determined by Value. First, the recipient must separate the various contract activities to be undertaken and classify them as design or construction, and then calculate the estimated total value of each. Because both design and construction are included in a single procurement, the FTA expects the recipient to use the procurement method appropriate for the services having the greatest cost, even though other necessary services would not typically be procured by that method.

- (a) Construction Predominant. The construction costs of a design-build project are usually predominant so that the recipient would be expected to use competitive negotiations or sealed bids for the entire procurement rather than the qualification-based “Brooks Act” procurement procedures. Specifically, when construction costs will be predominant, unless FTA determines otherwise in writing, an FTA recipient may not use qualifications-based procurement procedures to acquire architectural engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural and engineering, surveying, mapping, or related A&E services unless required by State law adopted before August 10, 2005.
 - (b) Design Services Predominant. In the less usual circumstance in which the cost of most work to be performed will consist of costs for architectural and engineering, program management, construction management, feasibility studies, preliminary engineering, design, architectural engineering, surveying, mapping, or related A&E services, FTA expects the recipient to use qualifications-based procurement procedures based on the “Brooks Act,” 40 U.S.C. Sections 1101 through 1104, as described in subsection 3.e of this Chapter.
- b. Selection Processes. The recipient may structure its design-build procurement using one or more steps as described below:
- (a) One-Step Method. The recipient may undertake its design-build procurement in a single step.
 - (b) Two-Step Method. Another procurement method the recipient may use for large design-build projects is a two-step selection process as authorized for Federal Government use by 41 U.S.C. Section 253m. This method consists of:
 - 1 Review of Technical Qualifications and Approach. The first step is a review of the prospective contractors’ technical qualifications and technical approach to the project. The recipient may then narrow the competitive range to those prospective contractors with satisfactory qualifications that demonstrate a technically satisfactory approach.
 - 2 Review of Complete Proposals. The second step consists of soliciting and reviewing complete proposals, including price, submitted by prospective contractors first determined to be qualified.
 - 3 By using this two-step method, it will not be necessary for the recipient to undertake extensive proposal reviews, nor will prospective offerors need to engage in expensive proposal drafting. This two-step selection procedure is separate and distinct from prequalification and is but one procurement method available to the recipient.

9. Other Than Full and Open Competition. Normally, the recipient must provide for full and open competition when soliciting bids or proposals. The Common Grant Rule for governmental recipients, however, acknowledges that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.
- a. When Appropriate. A recipient may use noncompetitive proposals only when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:
- (a) Adequate Competition. After soliciting several sources, FTA expects the recipient to review its specifications to determine if they are unduly restrictive or if changes can be made to encourage submission of more bids or proposals. After the recipient determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the recipient may determine the competition adequate. A cost analysis must be performed in lieu of a price analysis when this situation occurs.
 - (b) Sole Source. When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award. When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified.
 - 1 Unique Capability or Availability. The property or services are available from one source if one of the conditions described below is present:
 - 2 Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.
 - 3 Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
 - 4 Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - 5 Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.

- 6 Single Bid or Single Proposal. Upon receiving a single bid or single proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.
 - 7 Adequate Competition. FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient's control. Many unrelated factors beyond the recipient's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award.
 - 8 Inadequate Competition. FTA acknowledges competition to be inadequate when, caused by conditions within the recipient's control. For example, if the specifications used were within the recipient's control and those specifications were unduly restrictive, competition will be inadequate.
- (c) Unusual and Compelling Urgency. The Common Grant Rule for governmental recipients permits the recipient to limit the number of sources from which it solicits bids or proposals when a recipient has such an unusual and urgent need for the property or services that the recipient would be seriously injured unless it were permitted to limit the solicitation. The recipient may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the property or services.
- (d) Associated Capital Maintenance Item Exception Repealed. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) repealed the special procurement preference previously authorized for associated capital maintenance items. Thus, any sole source procurement of associated capital maintenance items must qualify for an exception under the same standards that would apply to other sole source acquisitions.
- (e) Authorized by FTA. The Common Grant Rules provides Federal agencies authority to permit a recipient to use noncompetitive proposals. Under this authority, FTA has made the following determinations:
- 1 Team, Consortium, Joint Venture, Partnership. With some exceptions, when FTA awards a grant agreement or enters into a cooperative agreement with a team, consortium, joint venture, or partnership, or provides FTA assistance for a research project in which FTA has approved the participation of a particular firm or combination of firms in the project

work, the grant agreement or cooperative agreement constitutes approval of those arrangements. In such cases, FTA expects the recipient to use competition, as feasible, to select other participants in the project. It can sometimes be difficult to determine whether a bidder or offeror is submitting its bid or offer as a team or other group with committed parties. The Recipient should clarify with the bidder or offeror how other entities included in its bid or offer are to be treated.

- 2 FAR Standards. To ensure that the recipient has flexibility equal to that of Federal contracting officers, FTA authorizes procurement by noncompetitive proposals in all of the circumstances authorized by FAR Part 6.3. In addition to circumstances discussed in the Common Grant Rules, the FAR authorizes less than full and open competitive procurements in one or more of the following circumstances:
- 3 Statutory Authorization or Requirement. To comply with Department of Transportation (DOT) appropriations laws that include specific statutory requirements, with the result that only a single contractor can perform certain project work.
- 4 National Emergency. To maintain a facility, producer, manufacturer, or other supplier available to provide supplies or services in the event of a national emergency or to achieve industrial mobilization.
- 5 Research. To establish or maintain an educational or other non-profit institution or a federally funded research and development center that has or will have an essential engineering, research, or development capability.
- 6 Protests, Disputes, Claims, Litigation. To acquire the services of an expert or neutral person for any current or anticipated protest, dispute, claim, or litigation.
- 7 International Arrangements. When precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or when prohibited by the written directions of a foreign government reimbursing the recipient for the cost of the acquisition of the supplies or services for that government.
- 8 National Security. When the disclosure of the recipient's needs would compromise the national security.
- 9 Public Interest. When the recipient determines that full and open competition in connection with a particular acquisition is not in the public interest.

b. When Prohibited. Less than full and open competition is not justified based on:

- (a) Failure to Plan. The recipient's lack of advance planning, or

- (b) Limited Availability of Federal Assistance. Concerns about the amount of Federal assistance available to support the procurement (for example, expiration of Federal assistance previously available for award).
- c. Procurement Procedures. When less than full and open competition is available to the recipient, the Common Grant Rule for governmental recipients directs the recipient to:
 - (a) Potential Sources. Solicit offers from as many potential sources as is practicable under the circumstances.
 - (b) Sole Source Justification. If the recipient decides to solicit an offer from only one source, the recipient must justify its decision adequately in light of the standards of subparagraph 3.i(1)(b) of this Chapter. FTA expects this sole source justification to be in writing.
 - (c) Cost Analysis. Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.
 - (d) Preaward Review. Submit the proposed procurement to FTA for preaward review if FTA so requests.

Contract Type

1. Typical Contract Types. Contract types may include, but are not limited to, the following:
 - a. Firm Fixed Price. A firm fixed price contract includes a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.
 - b. Cost Reimbursement. A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when the uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.
2. Prohibited or Restricted Contract Types. The Common Grant Rule for governmental recipients provides more guidance on contract type than does the Common Grant Rule for non-governmental recipients, which merely authorizes the recipient to select the type of contract it will use (for example, fixed price, cost reimbursement, purchase order, or incentive contract) if it is appropriate for the particular procurement and promotes the best interests of the program or project involved.
 - a. The following contract types are restricted or prohibited:
 - b. Cost Plus a Percentage of Cost—Prohibited. The Common Grant Rules expressly prohibits the use of the cost plus a percentage of cost method of contracting.
 - c. Percentage of Construction Cost—Prohibited. The Common Grant Rules expressly prohibits the use of the percentage of construction cost method of contracting.
 - d. Time and Materials—Restricted. The Common Grant Rule for governmental recipients permits the use of time and material contracts only:

- (a) When to Use. After determining that no other contract type is suitable; and
- (b) Firm Ceiling Price. If the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

Contractor Selection

Before the City will consider selection of a bidder or offeror for contract award, the City will determine if the bidders or offerors are responsive and responsible. To designate a potential contractor “responsive”, the City will state the documents to be submitted by the bidders or offerors and include a deadline for submission in the solicitation. The bidder or offeror will be considered responsive if they submit the bid, proposal or qualifications by the deadline and in accordance with the solicitation instructions.

To designate a prospective contractor “responsible”, as required by 49 U.S.C. Section 5325, the City, at a minimum, will require the successful Offeror to satisfy the following criteria, as well as being capable of successfully performing under the terms and conditions of the proposed contract and being qualified and eligible to receive the contract award under applicable laws and regulations:

1. Integrity and Ethics. Have a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A),
2. Debarment and Suspension. Be neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4 or the State of Texas Debarment and Suspension List,
3. Affirmative Action and DBE. Be in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements,
4. Public Policy. Be in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B),
5. Administrative and Technical Capacity. Have the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D),
6. Licensing and Taxes. Be in compliance with applicable licensing and tax laws and regulations,
7. Financial Resources. Have, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D),

8. Production Capability. Have, or can obtain, the necessary production, construction, and technical equipment and facilities,
9. Timeliness. Be able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments, and
10. Performance Record. Be able to provide:
 - a. Current Performance. A satisfactory current performance record, and
 - b. Past Performance. A satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
 - (1) Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
 - (2) Adequate Past Experience. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient's solicitation, and
 - (3) Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible, unless the recipient determines that the circumstances were properly beyond the bidder or offeror's control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. FTA expects the recipient to consider the number of the bidder or offeror's contracts involved and the extent of deficient performance in each contract when making this determination.

For sealed bids, the City will select the lowest bidder, who is deemed responsive and responsible, for contract award.

For competitive proposals, the City will state the evaluation criteria used to review the offeror's proposal in the solicitation. At a minimum, the criteria will include: experience, qualifications and quality of the offeror's services; the total long-term cost to the City to acquire the offeror's services; reputation of offeror; and any relevant criteria specifically listed in the RFP. If the City desires to use best value, then the City must state it with the evaluation criteria. The City will list the evaluation criteria in order of importance from high to low in the solicitation. All responsive and responsible offerors will be evaluated against the criteria and the City will select offeror with the highest evaluation for contract award.

The City will state the use of the state qualifications-based selection process and list the required qualifications in all FTA-assisted qualifications based procurements, which are restricted to

procuring A&E services and/or program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services as they directly connect to, directly relate to, or lead to construction, alteration, or repair of real property. The City will comply with Texas Government Code Title 10, General Government, Subtitle F, State and Local Contracts and Fund Management, Chapter 2254, Professional and Consulting Services, Subchapter A, Professional Services, which was adopted by the State as a law before August 10, 2005 and equivalent to the qualifications-based procurement procedures contained in the “Brooks Act for acquiring architectural, engineering, and design services. The City will state the use of the state qualifications-based selection process and list the required qualifications in all FTA-assisted professional architectural, engineering, and design services as they directly connect to, directly relate to, or lead to construction, alteration, or repair of real property.

Cost or Price

The City will prepare an independent cost estimate (ICE) for each FTA-assisted procurement prior to releasing publishing the solicitation. The ICE ensures clear basis for the grantee's determination that the benefits of the procurement warrant its cost, and provides essential procurement and financial planning information and a basis for price analysis, which may assist in avoiding the need for a more burdensome cost analysis. The ICE also serves as a basis for determining which procurement procedures (procurement method) apply to the project, as well as bonding and certification. Based on the procurement, the City will prepare the estimate using engineering or technical estimates, catalog or market prices offered in substantial quantities to the general public, regulated prices, or recent prices for similar goods and services.

Except for qualifications based procurements, the offeror's prices will be analyzed by examining and evaluating the proposed prices without evaluating its separate direct cost, overhead cost and profit. If there are more than two (2) responsive and responsible offerors, then the City will perform an "adequate price competition" price analysis by comparing each offeror's contract price with the other offerors. If there are less than two (2) responsive and responsible offerors, then the facts and circumstances surrounding the solicitation are used to determine if a price analysis (adequate competition) or a cost analysis (sole source) are performed.

Reasonable Documentation

The City will maintain the procurement history and associated documentation as a part of the procurement file. The extent of the documentation will be appropriate with the procurement method, which reflects the size and complexity of the procurement. At a minimum, the documentation will include: independent cost estimate; rationale for contract type; cost or price analysis; selection decision; and determination/negotiation of final contract price.

References

FTA C 4220.1F, Third Party Contracting Guidance, Revision 4, March 18, 2013
FTA C 5010.1D, Grant Management Requirements, Rev. 1, August 27, 2012
FTA Best Practices Procurement Manual, November 6, 2001

Appendix D

U.S. Department
of Transportation

**Federal Transit
Administration**

Conducting Pre-Award and Post-Delivery Audits for Bus Procurements

May 1, 1995

Prepared by

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Prepared for

Office of Grants Management
Federal Transit Administration
Washington, D.C. 20590

FTA DC-90-7713-93-1, Revision B

The information contained in this manual is based on the Pre-Award and Post-Delivery Audits of Rolling Stock Purchases – Final Rule, the Buy America Requirements – Final Rule; and preamble to those rules. The guidance in this manual does not constitute a determination of compliance with the DOT standards and rules or with your rights or responsibilities under the rules and is not binding on DOT.

Note 1: This content of this document was downloaded from http://www.fta.dot.gov/legislation_law/12921_5423.html. The format was modified to fit a MS Word document by The Goodman Corporation under contract with the City of Conroe Texas.

Note 2: FTA issued a Notice of Availability of Proposed Handbook and Request for Comments on 6/16/2015 and the comment period closed on August 17, 2015. As of January 8, 2016, there was no information posted regarding a final version of the handbook.

Note 3: The purchaser is required to complete pre-award and post-delivery certifications for any sources eligible for FTA-assisted procurement of transit vehicles including joint procurements, State or Local Government Purchasing Schedules or Purchasing Contracts, existing contracts (piggyback) and the open market.

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Definitions

The definitions provided below are provided to assist the reader with terms used in this manual. Some of these terms may be defined differently than those used in the Code of Federal Regulations. This has been done for clarification purposes. However, the reader should note that the definitions provided here are consistent with the intentions of the Pre-Award and Post-Delivery Review of Rolling Stock Purchases Rule and the Buy America Requirements Rule.

Altered vehicle manufacturer – A manufacturer who alters a previously certified vehicle in such a manner that its stated weight ratings or FMVSS certifications are no longer valid.

Analyst – A representative of the recipient (either working directly for the recipient or contracted by the recipient)—**not** an employee, or an agent, of the proposed bus manufacturer (in the case of the pre-award review) or the selected bus manufacturer (in the case of the post-delivery review).

Bus – A rubber-tired automotive vehicle used primarily for the purpose of providing mass transportation service.

Buy America Rule – The "Buy America Requirements" Regulation, Title 49 of the Code of Federal Regulations, Part 661.

Chassis-Cab – An incomplete vehicle (with a completed occupant compartment) that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended function.

Completed vehicle – A vehicle that requires no further manufacturing operations to perform its intended function. This includes vehicles that are altered only by (1) the addition, substitution, or removal of readily attachable components (such as mirrors, or tire and rim assemblies) or (2) minor finishing operations (such as painting) in such a manner that the vehicle's stated weight ratings are still valid.

Component – Any article, material, or supply, that is directly incorporated into an end product at the final assembly location.

DOT – The United States Department of Transportation.

End product – Any item to be acquired by a recipient, such as a bus.

Final assembly – The bringing together of a significant number of individual components, whether manufactured or unmanufactured, for the purpose of creating an end product.

Final-stage manufacturer – A manufacturer who performs manufacturing operations on an incomplete vehicle such that it becomes a completed vehicle.

FMVSS – Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration under Title 49 of the Code of Federal Regulations, Part 571.

FTA – Federal Transit Administration, an agency of DOT.

Incomplete vehicle – An assemblage of components consisting of, as a minimum, frame and chassis structure, power train, steering system, suspension system, and braking system — to the extent that those systems are to be part of a completed vehicle.

Intermediate vehicle manufacturer – A manufacturer, other than the incomplete vehicle manufacturer or the final-stage manufacturer, who performs manufacturing operations on an incomplete vehicle.

Manufacture – The transformation of a component or group of subcomponents for the purpose of adding value to, improving, or creating a functionally different component.

Post-delivery – The period during the procurement process beginning with the signing of a formal contract with the selected contractor. It includes the period of bus manufacturing, inspection, testing, and delivery. It ends with bus title transfer or the placement of the buses into revenue service, whichever is first.

Pre-award – The period during the procurement process before the recipient enters into a formal contract with the supplier.

Pre-Award and Post-Delivery Rule – The "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases" Regulation, Title 49 of the Code of Federal Regulations, Part 663.

Purchaser – The recipient or subrecipient.

Recipient – A receiver of Federal financial assistance from the FTA.

Revenue service – The operation of vehicles for the transportation of passengers as anticipated by the recipient.

Review – An analysis conducted by the recipient that will result in a file containing the necessary certifications of compliance, including the Buy America certification, purchaser's requirements certification, and FMVSS certification.

Rolling stock – Transit vehicles, such as buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, and vehicles used on guideways and incline planes.

STAA – The Surface Transportation Assistance Act of 1982 (Public Law 97-424, January 6, 1983).

Subcomponent – Any article, material, or supply that is one step removed from a component.

Unmodified van – A primary manufacturer’s standard production van that requires no further manufacturing operations to perform its intended function, other than the addition, substitution, or removal of readily available attachable components (such as mirrors, or tire and rim assemblies), or minor finishing operations (such as painting).

Introduction

The Federal Transit Act authorizes the Secretary of Transportation to provide assistance for the development of comprehensive and coordinated public and private mass transportation systems. The Act allows the Federal Transit Administration (FTA) to obligate Federal funds to mass transportation service providers for purchasing buses used to carry passengers in mass transit service. Recipients of these funds must comply with several Federal regulations, one of which is the Pre-Award and Post-Delivery Rule. If the FTA determines that the purchaser is not in compliance with the Rule, funding for the purchase may be jeopardized.

There are two parts to the Rule: the pre-award review and post-delivery review. The pre-award review is intended to help the recipient ensure that the proposed buses will meet (1) Buy America regulations, (2) the recipient's needs and specifications, and (3) the Federal Motor Vehicle Safety Standards (FMVSS) regulations. The post-delivery review is intended to help the recipient ensure that the delivered buses meet the above stipulations.

This manual provides guidance to recipients of Federal funds to help demonstrate compliance with (1) the pre-award review requirements **before** entering into a contract with a bus manufacturer and (2) the post-delivery review requirements **before** the title of the bus is transferred to the recipient.

Section One describes the requirements of the Pre-Award and Post-Delivery Rule. It details which certifications and documents are needed to support the procurement process — from issuance of the solicitation to title transfer. Sections Two and Three suggest procedures that the recipient may follow when conducting the pre-award and post-delivery reviews, respectively. The fourth section provides examples of Buy America calculations and suggests other activities to help the recipient conduct the reviews. Section Five provides responses to frequently asked questions concerning the Rule. The five appendices at the end of this manual provide samples of review certifications, lists of typical bus components, Buy America waivers, sample visual inspection and road test sheets, and a list of FTA offices, respectively.

Exhibit I-1 on the following page summarizes the content of each review and the certifications required for the review. The exhibit also indicates where each topic can be found in this manual. Recipients may use this exhibit as a checklist to track the completion of each review.

BUS: _____

CONTRACT NO.: _____

Pre-Award Review (Before signing a contract)	Buy America Certification (Page 2-1) A. Reviewed and Verified 60 Percent Domestic Content; AND
--	---

<p>with a supplier)</p>	<p>Reviewed and Verified Proposed U.S. Final Assembly Location, Operations, and Total Cost</p> <p>OR</p> <p>B. Requested and Received Buy America Waiver</p> <p>Purchaser’s Requirements Certification (Page 2-5) (Page 2-5)</p> <p>A. Checked Bid Specification Compliance With Solicitation Specifications;</p> <p>AND</p> <p>Completed Manufacturer Capability Study</p> <p>FMVSS Certification (Page 2-7)</p> <p>Requested and Received Manufacturer’s Letter Stating:</p> <p>A. The Information to be Included on the FMVSS Stickers</p> <p>OR</p> <p>B. The Buses Are Not Subject to FMVSS</p>
<p>Post-Delivery Review (Before using the buses in transit service)</p>	<p>Buy America Certification (Page 3-1)</p> <p>A. Reviewed and Verified 60 Percent Domestic Content;</p> <p>AND</p> <p>Reviewed and Verified Actual U.S. Final Assembly Location, Operations, and Total Cost</p> <p>OR</p>

	<p>B. Requested and Received Buy America Waiver</p> <p>Purchaser's Requirements Certification (Page 3-6)</p> <p>A. For Procurements of More Than Ten Buses or Modified Vans</p> <ul style="list-style-type: none"> o Completed Resident Inspector's Report; <p>AND</p> <ul style="list-style-type: none"> o Completed Visual Inspections and Road Tests <p>OR</p> <p>B. For Procurements of Ten or Fewer Buses or Modified Vans, and any Number of Unmodified Vans</p> <ul style="list-style-type: none"> o Completed Visual Inspections and Road Tests <p>FMVSS Certification (Page 3-9)</p> <p>A. Verified FMVSS Sticker is Affixed to Each Bus</p> <p>OR</p> <p>B. Requested and Received Manufacturer's Letter Stating That the Buses Are Not Subject to FMVSS</p>
<p>Note: All certifications must be kept on file. Supporting documentation should accompany each certification.</p>	

Exhibit I-1. Pre-Award and Post-Delivery Review Requirements and Checklist

The Pre-Award and Post-Delivery Review Requirements

The Pre-Award and Post-Delivery Rule requires recipients to certify that pre-award and post-delivery reviews will be conducted when using FTA-appropriated funds to purchase revenue service buses and vans.

This section details the pre-award and post-delivery review requirements for buses.

The Pre-Award Review

The pre-award review is required before a recipient may enter into a formal contract with a supplier. The review period begins after the recipient issues the solicitation and ends before the recipient signs a formal contract with the selected manufacturer.

The review requires the recipient to complete three certifications—the Buy America certification, the purchaser’s requirements certification, and the Federal Motor Vehicle Safety Standards (FMVSS) certification. All three certifications must be kept in the recipient’s files for future FTA reviews.

For the Buy America certification process, the recipient must:

either

- Verify that (1) the buses will contain a minimum of 60 percent domestic products, by cost, and (2) final assembly of the buses will take place in the United States

or

- Obtain, from the FTA, a copy of the waiver letter exempting the buses from the Buy America requirements.

For the purchaser’s requirements certification, the recipient must verify that:

- The manufacturer’s bid specifications are in compliance with the recipient’s solicitation specifications

and

- The proposed manufacturer is responsible and capable of building the bus to the recipient’s solicitation specifications.

For the FMVSS certification, the recipient must obtain:

either

- A letter from the bus manufacturer stating the information that will be provided on the FMVSS vehicle sticker

or

- A letter from the bus manufacturer stating that the buses are not subject to FMVSS.

The Post-Delivery Review

A post-delivery review must be completed before a bus title is transferred to the recipient, or before a bus is placed into revenue service, whichever is first. The review period begins when the recipient signs a formal contract with the selected manufacturer and ends before title transfer or use in service.

As with the pre-award review, the recipient must complete three certifications—the Buy America certification, the purchaser’s requirements certification, and the FMVSS certification. Again, all three certifications must be kept in the recipient’s files for future FTA reviews.

The Buy America and FMVSS certification processes are similar to those completed during the pre-award review, with the exception that the review now reflects information based on the actual buses versus the proposed buses. The post-delivery purchaser’s requirements certification process is different from the pre-award purchaser’s requirements certification process.

For the purchaser’s requirements certification, the recipient must:

- Complete visual inspections and road tests to demonstrate that the buses meet the contract specifications

and (if purchasing more than ten buses or modified vans)

- Send a resident inspector to the manufacturer’s production facility during the final assembly period to (1) monitor the final assembly process and (2) complete a final report describing the construction activities and explaining how the construction and operation of the buses fulfill the contract specifications.

If the recipient is purchasing **ten or fewer buses, ten or fewer modified vans, or any number of primary manufacturer standard production unmodified vans**, the resident inspector is **not** required.

The Pre-Award Review Requirements

This section explains procedures that will help the recipient conduct the pre-award review in accordance with the Pre-Award and Post-Delivery Rule. It cites relevant portions of the Rule and describes the review process. Sample certifications that the recipient may use as models to demonstrate that the review has been conducted as required by the Rule are presented in Appendix A.

The Pre-Award Buy America Certification Requirement

This subsection discusses procedures that recipients may follow to demonstrate compliance with the pre-award Buy America certification requirement.

Buses to be purchased by a recipient must fall into one of two categories under this requirement: (1) buses that meet the Buy America domestic content and assembly requirement and (2) buses for which a Buy America waiver is available. The procedures for each category are described below.

Buy America-Compliant Buses

Most buses must meet the 60 percent minimum domestic content and U.S. final assembly requirements set forth in the Buy America Rule. Therefore, the recipient must be satisfied that the buses will meet the requirements. In other words, the recipient must be satisfied that the manufacturer who is proposing to sell the buses can and will comply with the content and assembly requirements.

"The recipient is satisfied that the [buses meet] ... the requirements ... after having reviewed ... documentation ... [listing c]omponent and subcomponent parts; ... location, ... activities, ... [and] cost of final assembly."
[\[1\]](#)

As a first step in the pre-award review process, the recipient, or a duly appointed analyst, must review the Buy America information that the proposed manufacturer must provide for the review.

The manufacturer's information must include:

- A listing of the bus components and subcomponents that will be used to calculate the percent domestic content (see Appendix B for a listing of typical bus components)

and

- The proposed final assembly location

and

- Activities that will take place during final assembly

and

- The proposed total cost of final assembly.

Each component and subcomponent on the list must be identified by manufacturer, country of origin, and cost (in either a dollar or percentage format). Final assembly costs are not to be included when calculating the percent domestic content of the bus. Likewise, component manufacturing costs are not to be used when calculating the percent domestic content of a component.

The manufacturer's list **must** identify the domestic subcomponents for major components used in the content calculation, such as engines, transmissions, and wheelchair lifts.

Section Four, "Examples of Complying With the Pre-Award and Post-Delivery Review Requirements," presents samples of domestic content calculations. Section Five, "Frequently Asked Questions About the Pre-Award and Post-Delivery Review," answers questions concerning the domestic content of components and subcomponents and the allowable cost used in the percent domestic content calculations of the bus.

To be assured that the manufacturer can comply with the requirements, the analyst must verify that the buses will contain a minimum of 60 percent domestic products, by cost. Therefore, the analyst must:

- Review the component and subcomponent listings to verify 60 percent domestic product content

and

- Review the final assembly cost.

The analyst should subtract the final assembly cost from the price of the buses to approximate the total component cost and thus the percentage base that the manufacturer used to calculate the domestic cost contribution for each item listed in the manufacturer's information.

To verify that the final assembly location will be within the United States, the analyst must:

- Check that the manufacturer has identified a final assembly location that is within the United States

and

- Review the list of final assembly activities, which should include activities, such as welding, subassembly activities, component installation, and painting, to ensure that activities at the cited final assembly location qualify as final assembly.

After the analyst has completed the steps described above, the recipient must:

- Complete a pre-award Buy America compliance certification (see sample in Appendix A, Exhibit A-1)

and

- Keep the Buy America certification on file for future FTA reviews.

If the manufacturer agrees, the recipient should, **but is not required to**, keep a copy of the manufacturer's Buy America information with the Buy America certification in the file.

Buy America-Exempt Buses

Although few buses are exempt from the Buy America domestic content and final assembly requirements, some manufacturers' buses may be eligible for an FTA waiver exempting the buses from the requirements. If a waiver does exist for the buses the recipient must:

"There is a letter from [FTA], which grants a waiver to the [buses] to be purchased ..." [\[2\]](#)

- Obtain a Buy America waiver letter from the FTA for the buses

and

- Complete a pre-award Buy America exemption certification (see sample in Appendix A, Exhibit A-2)

and

- Keep the Buy America certification on file for future FTA reviews.

The recipient should keep a copy of the FTA waiver letter with the Buy America certification in the files. Appendix C summarizes details of current Buy America waivers.

The Pre-Award Purchaser's Requirements Certification Requirement

This subsection discusses procedures that recipients may follow to demonstrate compliance with the pre-award purchaser's requirements certification requirement.

This requirement is intended to eliminate those manufacturers that appear irresponsible and/or incapable of complying with the recipients' solicitation specifications.

To comply with the purchaser's requirements certification, the recipient, or a designated analyst, must check:

- That the manufacturer's bid specifications are in compliance with the recipient's solicitation specifications

and

- That the proposed manufacturer will be capable of meeting the specifications.

To ensure compliance, the analyst should review:

- The solicitation specifications, the bid specifications, and the recipient's approval of any approved equals

and

- The manufacturer's qualifications (such as quality control measures, previous customer's, and other qualification documents).

After the review has been completed, the recipient must:

- Complete a pre-award purchaser's requirements certification (see sample in Appendix A, Exhibit A-3)

and

- File the purchaser's requirements certification for future FTA reviews.

The recipient should keep copies of their solicitation specification, the manufacturer's bid specification, approvals of any approved equals, and manufacturer qualifications with the purchaser's requirements certification in the file.

The Pre-Award Federal Motor Vehicle Safety Standards (FMVSS) Certification Requirement

This subsection discusses procedures that recipients may follow to demonstrate compliance with the FMVSS certification requirement.

Most buses must comply with the FMVSS regulations, although these standards may not apply to all bus procurements.

FMVSS-Compliant Buses

As previously stated, most buses must comply with the FMVSS regulations. If this is the case, the recipient must:

- Obtain the FMVSS self-certification sticker information from the manufacturer (see Section Four, Exhibits 4-5 through 4-9, for samples of FMVSS stickers)

and

- Complete a pre-award FMVSS compliance certification (see sample in Appendix A, Exhibit A-4)

and

- File the FMVSS certification for future FTA reviews.

The recipient should keep the manufacturer's pre-award FMVSS sticker information with the FMVSS certification in the file.

FMVSS-Exempt Buses

Although nearly all buses are subject to the FMVSS regulations, some buses may not be subject to the FMVSS regulations. Details of exemptions are explained in Title 49 of the Code of Federal Regulations Part 555, "Temporary Exemption From Motor Vehicle Safety Standards." If the buses are not subject to the FMVSS regulations, the recipient must:

- Obtain the manufacturer's certified statement indicating that the contracted buses will not be subject to the FMVSS regulations

and

- Complete a pre-award FMVSS exemption certification (see sample in Appendix A, Exhibit A-5)

and

- File the FMVSS certification for future FTA reviews.

The recipient should keep the manufacturer's pre-award FMVSS statement with the FMVSS certification in the file.

[1] Section 663.25(b), "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR, Part 663.

[2] Section 663.25(a), "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR, Part 663.

The Post-Delivery Review Requirements

In addition to the pre-award review requirements, recipients must comply with the post-delivery review requirements during and after bus manufacturing. This section explains procedures that will help the recipient conduct the post-delivery review in accordance with the Pre-Award and Post-Delivery Rule. It cites relevant portions of the Rule and describes the review process. Sample post-delivery certifications that the recipient may use as models to demonstrate that the review has been conducted as required by the Rule are presented in Appendix A.

The Post-Delivery Buy America Certification Requirement

This subsection discusses procedures that recipients may follow to demonstrate compliance with the post-delivery Buy America certification requirement.

The process for complying with the post-delivery Buy America certification requirement is similar to the pre-award requirement, except that the recipient is now certifying the actual buses rather than the proposed buses. As with the pre-award review, the buses received must fall into one of two categories under this requirement: (1) buses meeting the Buy America domestic content and assembly requirements and (2) buses for which a Buy America waiver is available. The procedures for each category are described below.

If the Buy America information has not changed since the pre-award review and the recipient is satisfied that this is the case, the recipient may use the pre-award review documentation for the post-delivery review. However, if there is some doubt, another review should be conducted.

Buy America-Compliant Buses

Most buses must meet the 60 percent minimum domestic content and U.S. final assembly requirements set forth in the Buy America Rule. Therefore the recipient must be satisfied that the buses comply with the requirements. Before certifying that the purchased buses meet the Buy America requirements, the recipient or a duly designated analyst must review the Buy America information, which must be provided by the manufacturer. This information must include:

"The recipient is satisfied that the [buses meet] ... the requirements ... after having reviewed ... documentation ... [listing c]omponents and subcomponent parts; ... location, ... activities, ... [and] cost of the final assembly." [1]

- A listing of bus components and subcomponents used to calculate the percent domestic content (see Appendix B for a listing of typical bus components)

and

- The actual final assembly location

and

- The activities that took place during final assembly

and

- The actual total cost of final assembly.

Each component and subcomponent on the list must be identified by manufacturer, country of origin, and cost (in either a dollar or percentage format). Final assembly costs are not to be included when calculating the percent domestic content of the bus. Likewise, component manufacturing costs are not to be used when calculating the percent domestic content of a component.

The manufacturer's list **must** identify domestic subcomponents for major components used in the content calculation, such as engines, transmissions, and wheelchair lifts.

Section Four, "Examples of Complying With the Pre-Award and Post-Delivery Review Requirements," presents samples of domestic content calculations. Section Five, "Frequently Asked Questions About the Pre-Award and Post-Delivery Review," answers questions concerning the domestic content of components and subcomponents and the cost to be used in the domestic content calculations of the bus.

To be assured that the buses are in compliance with the requirements, the analyst must verify that the buses contain a minimum of 60 percent domestic products, by cost. Therefore, the analyst must:

- Review the component and subcomponent listings to verify 60 percent domestic product content

and

- Review the total final assembly cost.

The analyst should subtract the final assembly cost from the price of the buses to approximate the total component cost and thus the percentage base that the manufacturer used to calculate the domestic cost contribution for each item listed in the manufacturer's information. The manufacturer is not required to give the analyst or the recipient a copy of the cost information to retain in the recipient's files.

To verify that the final assembly location was within the United States, the analyst must:

- Check that the manufacturer's final assembly location is located within the United States

and

- Review the list of final assembly activities, which should include activities such as welding, subassembly activities, component installation, and painting, to ensure that the activities at the final assembly location qualify as final assembly.

After the analyst has completed the steps described above, the recipient must:

- Complete a post-delivery Buy America compliance certification (see sample in Appendix A, Exhibit A-6)

and

- Keep the Buy America certification on file for future FTA reviews.

If the manufacturer agrees, the recipient should, **but is not required to**, keep a copy of the manufacturer's Buy America information with the Buy America certification in the file.

Buy America-Exempt Buses

Although few buses are exempt from the Buy America domestic content and final assembly requirements, some manufacturers' buses may be eligible for an FTA waiver, exempting the buses from the requirements. If the buses are exempt, the recipient must:

"There is a letter from [FTA], which grants a waiver to the [buses] received ..." [2]

- Obtain a Buy America waiver letter from the FTA for the buses

and

- Complete a post-delivery Buy America exemption certification (see sample in Appendix A, Exhibit A-7)

and

- Keep the Buy America certification on file for future FTA reviews.

The recipient should keep a copy of the FTA waiver letter with the Buy America certification in the files. Appendix C summarizes details of current Buy America waivers.

The Post-Delivery Purchaser's Requirements Certification Requirement

This subsection discusses procedures that recipients may follow to demonstrate compliance with the post-delivery purchaser's requirements certification requirement.

The requirements for and process of complying with the post-delivery purchaser's requirement certification depend on the number of buses purchased. The recipient has more demanding responsibilities when procuring more than ten buses or modified vans than when procuring ten or fewer buses or modified vans, or any number of unmodified vans.

The purchaser's requirements certification is meant to help safeguard the recipient by ensuring that the buses are built to contract specifications.

More Than Ten Buses or Modified Vans

To demonstrate compliance with the purchaser's requirements certification requirement when procuring more than ten buses or more than ten modified vans, the recipient, or its duly appointed analyst, must:

"a resident inspector ... was at the manufacturing site After reviewing the [inspector's] report, and visually inspecting and road testing the [buses], the [buses] meet the contract specifications." [3]

- Send a resident inspector to the manufacturer's final assembly facility

and

- Visually inspect and road test the buses and/or vans.

The resident inspector must complete a manufacturing report, which should include any information that supports or refutes claims made by the manufacturer concerning its capabilities or the bus specifications. This information will help support the recipient in any disputes that might arise with the manufacturer. For buses manufactured in multiple stages (such as body-on-chassis buses), the resident inspector is required to visit the final-stage manufacturer's final assembly location only.

The resident inspector's report must include, at a minimum:

- Accurate records of all bus construction activities (such as component manufacturing processes, final assembly activities, and quality control data collected)

and

- A description of how the construction and operation of the bus(es) fulfills the contract specifications (the report should reference the above cited manufacturing processes, final assembly activities, and quality control data).

After the resident inspector has completed the report, the recipient, or its analyst, must review the report and conduct the visual inspections and road tests. To assist the recipient and analyst, sample visual inspection and road test sheets are presented in Appendix D.

Once the steps described above have been completed, the recipient must:

- Complete a post-delivery purchaser's requirements certification (see sample in Appendix A, Exhibit A-8)

and

- File the purchaser's requirements certification for future FTA reviews.

The resident inspector's report, visual inspection sheets, and road test sheets should be included in the file with the purchaser's requirements certification.

Ten or Fewer Buses or Modified Vans, or any Number of Unmodified Vans

When procuring ten or fewer buses, ten or fewer modified vans, or any number of unmodified vans, the recipient is **not** required to send a resident inspector to the manufacturing site. However, to demonstrate compliance with the post-delivery purchaser's requirements certification requirement, the recipient, or its analyst, must:

"after visually inspecting and road testing the vehicles, the [buses] meet the contract specifications." [4]

- Visually inspect and road test the buses before delivery

The visual inspections and road tests are required to verify that the buses meet the contract specifications. Once they have been concluded, the recipient must:

- Complete a post-delivery purchaser's requirements certification (see sample in Appendix A, Exhibit A-9)

and

- File the purchaser's requirements certification for future FTA reviews.

The data sheets for the visual inspection and the road tests should be kept in the file with the purchaser's requirements certification.

The Post-Delivery Federal Motor Vehicle Safety Standards (FMVSS) Certification Requirement

This subsection discusses procedures that recipients may follow to demonstrate compliance with the post-delivery FMVSS certification requirement.

The process for complying with the post-delivery FMVSS certification requirement is similar to the process completed during the pre-award review for this requirement. The difference is that the recipient is now certifying the actual buses rather than the proposed buses.

As with the pre-award review, most buses must comply with the FMVSS regulations, although the standards may not apply to every bus procurement.

FMVSS-Compliant Buses

As indicated, most buses must comply with the FMVSS regulations. If the buses are subject to the FMVSS regulations, the recipient must:

"[the recipient has] received ... a copy of the manufacturer's self-certification information ..." [\[5\]](#)

- Check that the manufacturer's FMVSS sticker is affixed to each bus (see Section Four, Exhibits 4-5 through 4-9, for samples of FMVSS stickers)

and

- Complete an FMVSS certification (see sample in Appendix A, Exhibit A-10)

and

- File the FMVSS certification for future FTA reviews.

FMVSS-Exempt Buses

Although most buses are subject to the FMVSS regulations, some buses may be exempt from the regulations. Details of FMVSS exemptions are explained in Title 49 of the Code of Federal Regulations Part 555, "Temporary Exemption From Motor Vehicle Safety Standards." If the buses are not subject to the FMVSS regulations, the recipient must:

"[the recipient has] received a statement ... from the manufacturer." [\[6\]](#)

- Request and receive a manufacturer's certified statement indicating that the buses are not subject to FMVSS

and

- Complete a post-delivery FMVSS exemption certification (see sample in Appendix A, Exhibit A-11)

and

- File the FMVSS certification for future FTA reviews.

The recipient should keep the manufacturer's post-delivery statement with the FMVSS certification in the file.

[1] Section 663.35(b), "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR, Part 663.

[2] Section 663.35(a), "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR, Part 663.

[3] Section 663.37(a)&(b), "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR, Part 663.

[4] Section 663.37(c), "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR, Part 663.

[5] Section 663.41, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR, Part 663.

[6] Section 663.43, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR, Part 663.

Examples of Compliance with the Pre-Award and Post-Delivery Review Requirements

This section provides examples of Buy America certification calculations, purchaser's requirements certification information, and sample FMVSS self-certification stickers.

Buy America Certification

Exhibit 4-1 presents a sample table to be prepared by a manufacturer for the Buy America certification process.

Component	Manufacturer	Origin	Component Cost	Bus Cost
Subcomponent				
1. Engine				
Alternator	A Co.	U.S.A.	3%	
Starter	B Co.	U.S.A.	3	
Fuel Injectors	D Co.	U.S.A.	6	
Radiator	E Co.	U.S.A.	4	
Engine Block	C Co.	U.S.A.	24	
Cylinder Head	C Co.	U.S.A.	20	
Total (engine)	C Co.	U.S.A.	60%	12%
2. Transmission				
Gear Box	C Co.	U.S.A.	26%	
Clutch	F Co.	U.S.A.	14	
Housing	C Co.	U.S.A.	28	
Total (transmission)	C Co.	U.S.A.	68%	5
3. Lift				
Control Unit	G Co.	U.S.A.	30%	
Floor, Rails, & Barriers	H Co.	U.S.A.	32	
Total (lift)	H Co.	U.S.A.	62%	10
4. Passenger Seats	I Co.	U.S.A.		9
5. Interior & Exterior Body Panels	J Co.	U.S.A.		3
6. Air-Conditioning	K Co.	U.S.A.		5

7. Farebox	L Co.	U.S.A.		1
8. Doors	M Co.	U.S.A.		1
9. Windows	N Co.	U.S.A.		3
10. Front Axle	O Co.	U.S.A.		2
11. Rear Axle	O Co.	U.S.A.		4
12. Destination Sign	P Co.	U.S.A.		2
13. Electrical Harness	Q Co.			3
Total (bus)				60%

Exhibit 4-1. Sample Manufacturer's Buy America Calculation

If a component is manufactured in the United States with less than 60 percent domestic subcomponents, then only its domestic cost (i.e., the cost of its **domestic** subcomponents **plus** the cost of manufacturing the component) may be used in the domestic content calculation of the bus.

Domestic subcomponents exported for inclusion in a foreign-manufactured component may also be included in the Buy America calculation, if the domestic subcomponents received a tariff exemption for importation back into the United States. However, **only** the cost of the **domestic** subcomponents, which is the cost at the time of export, may be used in the domestic content calculation of the bus.

The presentation of the costs for both of the above cases is different from that shown in Exhibit 4-1. Exhibit 4-2 presents the Buy America presentation for the cost of a transmission with at least 60 percent domestic subcomponents as was shown in Exhibit 4-1.

Component	Manufacturer	Origin	Component Cost	Bus Cost
Subcomponent				
2. Transmission				
Gear Box	C Co.	U.S.A	26%	
Clutch	F Co.	U.S.A.	14	
Housing	C Co.	U.S.A.	28	
Total (transmission)	C Co.	U.S.A	68%	5%

Exhibit 4-2. Sample Content Calculation for a U.S.-Manufactured Component With at Least 60 Percent Domestic Subcomponents

The 5 percent "Total (transmission)" figure in Exhibit 4-2 indicates that the transmission cost equals 5 percent of the cost of all components used in the bus. In this case, the transmission cost

includes direct labor costs, direct materials costs, freight-in costs, sales costs, general and administrative costs, and an allowance for profit attributable to manufacturing the transmission.

For example, if the total cost of all bus components is \$100,000, then, according to Exhibit 4-2, the cost of the transmission is \$5,000. Of that \$5,000, if \$4,000 were the total cost of all subcomponents, then \$1,000 would be the cost of manufacturing. The cost of the gear box, clutch, and housing is \$1,040, \$560, and \$1,120, respectively.

Exhibit 4-3 presents a Buy America calculation for a transmission manufactured in the United States with less than 60 percent domestic subcomponents.

Component	Manufacturer	Origin	Component Cost	Bus Cost
Subcomponent				
2. Transmission				
Gear Box	C Co.	U.S.A	26%	
Clutch	F Co.	U.S.A.	14	
Total (transmission)	C Co.	U.S.A	40%	2.6%

Exhibit 4-3. Sample Content Calculation for a U.S.-Manufactured Component With Less Than 60 Percent Domestic Subcomponents

In Exhibit 4-3, the 2.6 percent "Total (transmission)" figure means that the cost of the domestic subcomponents (or 40 percent of the total transmission subcomponent cost) **plus** the cost of manufacturing the transmission equals 2.6 percent of the cost of all components used in the bus. In this case, the cost of the transmission includes direct labor costs, **domestic** direct materials costs (or the domestic subcomponent costs), freight-in costs, an allowance for profit, and the sales, general and administrative costs attributable to manufacturing the transmission.

Using the earlier example, the 40 percent implies that the domestic subcomponents cost \$1,600. Since the \$1,000 manufacturing cost is allowed, the total is \$2,600, or 2.6 percent of \$100,000.

Exhibit 4-4 provides an example of a transmission from a foreign source with domestic subcomponents that received tariff exemptions.

Component	Manufacturer	Origin	Component Cost	Bus Cost
Subcomponent				
2. Transmission				
Gear Box	C Co.	U.S.A	26%	
Clutch	F Co.	U.S.A.	14	
Total (transmission)	C Co.	Foreign Country	40%	1.6%

Exhibit 4-4. Sample Content Calculation for a Foreign-Manufactured Component With Domestic Subcomponents

In Exhibit 4-4, the 1.6 percent "Total (transmission)" figure means that the cost of the domestic subcomponents (**domestic** direct materials cost) used in the transmission is 1.6 percent of the cost of all components used in the bus.

Continuing with the previous example, the 1.6 percent indicates that the domestic components contribute \$1,600 toward the cost of the bus. Recall that the total cost of the subcomponents equals \$4,000. Note, however, that the \$1,000 manufacturing cost is **not** allowed for foreign components as is allowed in both previous examples.

A component's manufacturing cost is never used when calculating the domestic content of that component; its domestic content is based on subcomponent cost only. However, the component's manufacturing cost should be used in the domestic content calculation of the bus, if the component was manufactured in the United States. Notice in the examples that the \$1,000 manufacturing cost never contributes toward the domestic content of the **component**, but it does contribute toward the domestic content of the **bus** in Exhibits 4-2 and 4-3.

Purchaser's Requirements Certification

The recipient should keep the following information in the certification file to support the purchaser's requirements certification review:

- A comparison of solicitation and bid specifications
- An analysis of manufacturing capability
- Copies of the visual inspection sheets
- Copies of the road test sheets
- A copy of the resident inspector's report describing manufacturing activities (if required)
- Records of quality control measurements.

Comparison of Solicitation and Bid Specifications

The recipient should keep on file copies of the solicitation specifications, the manufacturer's specifications, and the recipient's agreement to any deviations from the solicitation technical specifications as proposed by the manufacturer.

Analysis of Manufacturing Capability

The recipient should keep on file an analysis of a prospective manufacturer's information used to verify that the manufacturer is capable of building the bus to the specifications. This analysis may include statements, letters, and other information from the manufacturer describing the product, manufacturing and final assembly operations, and quality assurance program.

Visual Inspection Sheets

The visual inspection sheets should include a line for each item in the specification that can be verified and signed off. Appendix D contains a sample visual inspection sheet.

Road Test Sheets

Road test sheets should include all information cited in the contract that fairly represents the handling and operation of the bus(es). It might include items such as top speed, gradeability, fuel economy, noise, accessibility, maintainability, handling, and operation of all accessories. Appendix D contains a sample road test sheet.

Manufacturing Activities

The resident inspector’s report must include a description of final assembly and manufacturing operations, including a description of machine and hand operations—such as welding, painting, and drilling.

Records of Quality Control Measurements

Typical records of quality control should include information of actual and specified dimensions, clearances, and machining and assembly tolerances. In addition, the operational characteristics of all accessories should be included with this information.

FMVSS Certification

Vehicle labels must be permanently affixed in such a manner that they cannot be removed without being destroyed or defaced. The color of the lettering shall be such that it stands out from the background of the label. The lettering shall be in block capitals not less than 3/32 of an inch high.

Buses subject to FMVSS must have a FMVSS sticker affixed to the bus. Exhibits 4-6 through 4-10 present samples of various FMVSS stickers.

MANUFACTURED BY (NAME).	
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)
THIS VEHICLE CONFORMS TO ALL APPLICABLE U.S. FEDERAL MOTOR VEHICLE SAFETY STANDARDS IN	

EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE.

VIN: (VEHICLE IDENTIFICATION NUMBER)

TYPE: (VEHICLE TYPE)

VEHICLE IDENTIFICATION NUMBER VEHICLE TYPE

Exhibit 4-6. Sample Completed Vehicle FMVSS Sticker

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)

GVWR:(WEIGHT) LB

WEIGHT

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)

Exhibit 4-7. Sample Altered 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)**

(NAME). (MONTH/YEAR)

Exhibit 4-8. Sample Incomplete 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)**

Exhibit 4-9. Sample Intermediate Vehicle Manufacturer's FMVSS Sticker

MANUFACTURED BY (NAME).

DATE: (MONTH/YEAR)

(NAME)(MONTH/YEAR)

INCOMPLETE VEHICLE MANUFACTURED BY (NAME).

DATE: (MONTH/YEAR)

(NAME)(MONTH/YEAR)

GVWR:(WEIGHT) LB

WEIGHT

**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)**

**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).**

VIN: (VEHICLE IDENTIFICATION NUMBER)

TYPE: (VEHICLE TYPE)

VEHICLE TYPE

or

**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).**

VIN: (VEHICLE IDENTIFICATION NUMBER)

TYPE: (VEHICLE TYPE)

VEHICLE TYPE

or

**THIS VEHICLE CONFORMS TO ALL OTHER
APPLICABLE FEDERAL MOTOR VEHICLE SAFETY
STANDARDS IN EFFECT IN (MONTH/YEAR).**

VIN: (VEHICLE IDENTIFICATION NUMBER)

TYPE: (VEHICLE TYPE)

VEHICLE TYPE

Exhibit 4-10. Samples of Final-Stage Vehicle Manufacturer's
FMVSS Stickers

Frequently Asked Questions about the Pre-Award and Post-Delivery Review

This section presents some of the most frequently asked questions about pre-award and post-delivery review. This guidance is for information only. The responses do not constitute a determination of compliance with the Department of Transportation (DOT) standards and rules. Appendix E contains a list of FTA regional offices to contact if further clarification is needed.

General

1. When must a recipient complete the "Certification of Compliance" as stipulated in Section 663.7 of the Rule?

The Section 663.7 Certification of Compliance must be submitted as part of the grant application for any revenue service rolling stock grant. (See Exhibit 5-1 for a sample certification.) Once a recipient has submitted their first certification, the certification may be retained in the recipient's files and referenced in the "Statement of Continuing Validity" for any future rolling stock grants.

<p>PRE-AWARD AND POST-DELIVERY AUDIT CERTIFICATION OF COMPLIANCE</p> <p>As required by 49 CFR Part 663, Subpart A, _____ _____ (the recipient) certifies that it will conduct, or cause to be conducted, pre-award and post-delivery audits as prescribed in the "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases; Final Rule."</p> <p>Date: _____</p> <p>Signature: _____</p> <p>Title: _____</p>

Exhibit 5-1. Sample Certification of Compliance

2. Who must sign the Certification of Compliance?

The certification must be signed by the recipient even if the funds will be passed on to another party. Further, if the funds are passed on, the initial recipient has the ultimate responsibility of ensuring that the final recipient of the funds carries out its duties and responsibilities as required by the Rule.

3. Who must conduct the pre-award and post-delivery reviews?

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

Buy America Certification

1. Must a Buy America certification be conducted for every procurement, even if identical buses 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, as well as technical developments, may make updated products noncompliant. If a pre-award and post-delivery Buy America review has been conducted for a given bus, then the same information may be used to demonstrate compliance at a later date if there has been no component or assembly changes to the bus since the last certification.

2. Is the 60 percent domestic content calculated as a percentage of the total bus price?

No. The 60 percent domestic content is calculated as a percentage of the total cost of all components, before final assembly. The cost of an individual component is the price a bus manufacturer pays a supplier for that component, plus freight-in costs and (if foreign) any applicable duties.

3. How is the origin of a component determined?

A component is considered to be of domestic origin, if at least 60 percent of its subcomponents, by cost, 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 used in the Buy America calculation of the bus.

The cost of an individual subcomponent is the price a component manufacturer pays a supplier for that subcomponent, plus freight-in costs and (if foreign) any applicable duties.

If the component is manufactured at the final assembly location, then the manufacturing and final assembly activities must be separate and distinct activities.

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

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 Buy America 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 Buy America calculation.

Raw materials exported for use in a component manufactured outside the United States may not be used in the Buy America calculation.

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

No. The rule states that sub-subcomponents are not required to be identified in the Buy America calculations.

6. If a bus uses a component from a foreign source and we wish to order it later as a spare part, do we need to conduct a domestic content certification for that spare part?

No. The Pre-Award and Post-Delivery Rule applies to the purchase of buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, and vehicles used on guideways and incline planes. The Rule does not apply to the purchase of spare parts. Spare parts must, however, comply with the Buy America Rule.

7. What cost is used in the Buy America calculation for domestic components?

The entire cost of domestic components may be used in the content calculation. A component is considered domestic if it contains at least 60 percent domestic subcomponents, by cost, and is manufactured in the United States. The cost of a domestic component includes direct labor costs, direct material costs, sales costs, general and administrative costs, and overhead costs associated with manufacturing that component, plus freight-in costs. The total cost should be the actual cost of the component, **not** the bid price.

8. Are only components of domestic origin allowed to be used in the Buy America calculations?

No. Components manufactured in the United States with less than 60 percent domestic subcomponents, by cost, and foreign-manufactured components with domestic subcomponents, that received a tariff exemption for importation back into the United States, may be used in the Buy America content calculation.

9. If a component contains less than 60 percent domestic subcomponents, how would it be used in the calculation?

Components manufactured in the United States with less than 60 percent domestic subcomponents, by cost, may also be used in the domestic content calculation. However, the

component's entire cost may not be used. The cost for such a component includes direct labor costs, **domestic** direct material costs (domestic subcomponent costs), sales costs, general and administrative costs, and overhead costs associated with manufacturing that component, plus freight-in costs.

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

Yes. If the bus contains foreign-manufactured components with domestic subcomponents, which 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 may **not** be used, because it has been manufactured outside the United States.

11. What if the manufacturer is concerned about releasing proprietary information?

If the manufacturer is concerned about releasing proprietary information, the recipient may contract with an external consultant to conduct the manufacturer's Buy America certification review. After the consultant has reviewed the component and subcomponent documentation, the consultant will inform the recipient whether or not the Buy America requirements have been fulfilled. Once the recipient, or consultant, has reviewed the Buy America information, the manufacturer has fulfilled the requirements of the Buy America certification assuming that compliance has been established. The manufacturer is not required to provide the recipient with hard copies of the Buy America calculations. A manufacturer may require the external consultant to sign a proprietary information disclosure statement.

Purchaser's Requirements Certification

1. Can two or more recipients purchasing more than ten buses from the same contractor combine the orders and use one resident inspector?

Yes. The contract agreement between the inspector and the recipients should be carefully worded to cover the concerns of all parties.

2. If required, 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 ten or more buses or vans. The inspector must prepare a report (1) providing accurate records of all vehicle construction activities and (2) summarizing how the construction and operation of the vehicles meet (or do not meet) the terms of the contract.

The intent of the regulation is to help the recipients ensure that the vehicles will comply with their 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 requirement may be fulfilled through the use of periodic visits.

For example, a recipient may wish to send the resident inspector to the manufacturer's site full-time if the vehicles have been recently developed or significantly modified in order to meet the contract specifications. Or, the recipient may wish to send the inspector to the manufacturer's site for several short visits if the manufacturing period is expected to be long. On the other hand, the recipient may wish that the resident inspector visit the manufacturer's site less often if the vehicle lead-time is short or if the recipient has previously purchased identical vehicles from the same manufacturer. For buses or vans produced by multiple manufacturers, the resident inspector is only required to visit the final stage manufacturer's facility.

While the in-plant inspector is required for purchases of ten or more buses or vans, the recipient must be certain that the resulting inspector's report is equally comprehensive, regardless of the choice of inspection services. The number of visits and the length of each visit should be based on the recipient's level of comfort with the manufacturer's capabilities.

Remember that it is the recipient's responsibility to ensure that the vehicles comply with the contract specifications. The purpose of the resident inspector's report is to assist the recipient to verify that the vehicles meet the contract specifications.

3. Do any of the requirements of the Pre-Award and Post-Delivery Rule apply to the purchase of used rolling stock or public-to-public transfer of buses?

No. However, any arrangement designed to avoid the regulations would be considered an illegal circumvention of the regulations, which would result in the withdrawal of Federal funding.

4. Do the requirements apply to the remanufacture of buses?

Yes. A recipient must follow the procedures required in the regulations as a condition of Federal financial assistance in the remanufacture of buses. A project for the "remanufacture" of buses shall be defined as the "structural restoration of a standard, heavy-duty bus in addition to installation of new or rebuilt major components to extend its service life at least eight years." (*FTA Circular C 9030.1A*, Office of Grants Management [U.S. Department of Transportation, Federal Transit Administration, September 18, 1987], IV-4).

5. Where the contract provides for more than one delivery period, does the grantee conduct a post-delivery review for each delivery period?

This question addresses the circumstances where a contract provides for multiple deliveries and the delivery periods are scheduled at substantially different time intervals, such as 6 months or 1 year apart. When a contract for buses provides for separately scheduled delivery periods, the recipient should complete a post-delivery review for each period. This does not mean that a separate review is necessary for each shipment within a delivery period.

6. For procurements of body-on-chassis type buses or modified vans, what manufacturing sites and activities must be observed by a resident inspector?

In general, for procurements of body-on-chassis type buses and modified vans, the purpose and intent of the resident inspector requirement will be satisfied if an inspector visits the facility of the final-stage manufacturer where the completed bus's final assembly occurs to ensure that the buses will be in compliance with the contract specifications. An inspector would not be required to visit the incomplete vehicle or intermediate vehicle manufacturer's production facility.

7. What is the resident inspector requirement for subrecipients of FTA funds?

Many States make arrangements with vehicle manufacturers on the behalf of the State's local subrecipients. If a subrecipient is purchasing ten or fewer buses, then the resident inspector requirements will be waived. However, the subrecipient, or original recipient, must verify that the buses meet the contract specifications by road testing and visually inspecting the buses.

FMVSS Certification

1. Must my ADA-compliant buses be FMVSS certified?

Yes. All buses that are subject to the FMVSS regulations must meet the applicable standards.

2. Which FMVSS certifications are required?

Title 49 of the Code of Federal Regulations, Part 571 covers the rulings concerning all Federal Motor Vehicle Safety Standards.

Appendix A: Sample Review Certifications

Sample Review Certifications

Exhibit A-1. Sample Pre-Award Buy America Compliance Certification

PRE-AWARD BUY AMERICA COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B,

_____ (the recipient) is satisfied that the buses to be purchased,

_____ (number and description of buses) from

_____ (the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The recipient , or its appointed analyst _____

_____ (the analyst – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

Date: _____

Signature: _____ Title: _____

Exhibit A-2. Sample Pre-Award Buy America Exemption Certification

PRE-AWARD BUY AMERICA EXEMPTION CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B,

_____ (the recipient) certifies that there is a letter from FTA that grants a waiver to the buses to be purchased,

(number and description of buses), from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended.

Date: _____

Signature: _____ Title: _____

Exhibit A-3. Sample Pre-Award Purchaser's Requirements Certification

PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B,

_____ (the recipient) certifies that the buses to be purchased,

_____ (number and description of buses) 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 a bus that meets the specifications.

Date: _____

Signature: _____ Title: _____

Exhibit A-4. Sample Pre-Award FMVSS Compliance Certification

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by Title 49 of the 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 buses,

_____ (number and description of buses), will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.

Date: _____

Signature: _____ Title: _____

Exhibit A-5. Sample Pre-Award FMVSS Exemption Certification

PRE-AWARD FMVSS EXEMPTION CERTIFICATION	
As required by Title 49 of the CFR, Part 663 – Subpart D,	
_____ (the recipient) certifies that it received at the pre-award stage, a statement from	
_____ 's (the manufacturer) indicating that the buses,	
(number and description of buses), will not be subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.	
Date: _____	
Signature: _____	Title: _____

Exhibit A-6. Sample Post-Delivery Buy America Compliance Certification

POST-DELIVERY BUY AMERICA COMPLIANCE CERTIFICATION	
As required by Title 49 of the CFR, Part 663 – Subpart C,	
_____ (the recipient) certifies that it is satisfied that the buses received,	
(number and description of buses) from	
_____ (the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The recipient <input type="checkbox"/> , or its appointed analyst <input type="checkbox"/> _____	
_____ (the analyst – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the actual component and subcomponent parts of the buses identified by the manufacturer, country of origin, and cost; and (2) the actual location of the final assembly point for the buses, including a description of the activities that took place at the final assembly point and the cost of final assembly.	
Date: _____	
Signature: _____	Title: _____

Exhibit A-7. Sample Post-Delivery Buy America Exemption Certification

POST-DELIVERY BUY AMERICA EXEMPTION CERTIFICATION	
As required by Title 49 of the CFR, Part 663 – Subpart C,	
_____ (the recipient) certifies that there is a letter from FTA, which grants a waiver to the buses received,	

_____ (manufacturer, number and description of buses), from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended.	
Date: _____	
Signature: _____ Title: _____	

Exhibit A-8. Sample Post-Delivery Purchaser's Requirements Certification (More Than Ten Buses or Modified Vans)

POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION	
As required by Title 49 of the 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 buses,	
_____ (number and description of buses). The inspector monitored manufacturing and completed a report on the manufacture of the buses providing accurate records of all bus construction activities. The report addresses how the construction and operation of the buses fulfill the contract specifications. After reviewing the report, visually inspecting the buses, and road testing the buses, the recipient certifies that the buses meet the contract specifications.	
Date: _____	
Signature: _____ Title: _____	

**Exhibit A-9. Sample Post-Delivery Purchaser's Requirements Certification
(Ten or Fewer Buses or Modified Vans, or any Number of Unmodified Vans)**

POST-DELIVERY PURCHASER'S REQUIREMENTS CERTIFICATION	
As required by Title 49 of the CFR, Part 663 – Subpart C, after visually inspecting and road testing the contract buses, (the recipient) certifies that the buses,	

(number and description of buses) from	

_____ (the manufacturer), meet the contract specifications.	
Date: _____	
Signature: _____ Title: _____	

Exhibit A-10. Sample Post-Delivery FMVSS Compliance Certification

POST-DELIVERY FMVSS COMPLIANCE CERTIFICATION	
As required by Title 49 of the 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 buses,	

(number and description of buses), comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.	
Date: _____	
Signature: _____ Title: _____	

Exhibit A-11. Sample Post-Delivery FMVSS Exemption Certification

POST-DELIVERY FMVSS EXEMPTION CERTIFICATION	
As required by Title 49 of the 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 buses, _____

(number and description of buses), are not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 Code of Federal Regulations, Part 571.

Date: _____

Signature: _____ Title: _____

Appendix B: Typical Bus Components

The components listed below are examples of typical bus components. These lists are not meant to be exhaustive. Other components may be included in the Buy America calculation depending on the configuration of the buses.

Typical Components of Large Buses for the Buy America Content Calculation

- Air compressor and pneumatic systems
- Air conditioning compressor assemblies
- Air conditioning evaporator/condenser assemblies
- Aluminum extrusions
- Aluminum, steel, or fiberglass exterior panels and interior trim
- Designation sign assemblies
- Door control systems
- Drive shaft assemblies
- Driver's seat assemblies
- Engines
- Entrance and exit door assemblies
- Farebox
- Floor coverings
- Flooring
- Front and rear air brake assemblies
- Front and rear bumper assemblies
- Front and rear end cap assemblies
- Front axle assemblies
- Front suspension assemblies
- Generator/alternator and electrical systems
- Heating systems
- Interior lighting assemblies
- Passenger seats
- Radio
- Rear axle assemblies
- Rear suspension assemblies
- Specialty steel (structural steel tubing, etc.)
- Steering system assemblies
- Transmissions
- Wheelchair lifts and ramps
- Wheelchair securement and tie-down devices
- Window assemblies

Typical Components of Small Buses for the Buy America Content Calculation

- Air conditioning compressor assemblies
- Air conditioning evaporator/condenser assemblies
- Aluminum extrusions
- Aluminum, steel, or fiberglass exterior panels and interior trim
- Designation sign assemblies
- Door control systems
- Drive shaft assemblies
- Driver's seat assemblies
- Engines
- Entrance and exit door assemblies
- Farebox
- Floor coverings
- Flooring
- Front and rear air brake assemblies
- Front and rear bumper assemblies
- Front and rear end cap assemblies
- Front axle assemblies
- Front suspension assemblies
- Generator/alternator and electrical systems
- Heating systems
- Interior lighting assemblies
- Passenger seats
- Pneumatic systems
- Radio
- Rear axle assemblies
- Rear suspension assemblies
- Specialty steel (structural steel tubing, etc.)
- Steering system assemblies
- Transmissions
- Wheelchair lifts and ramps
- Wheelchair securement and tie-down devices
- Window assemblies

Appendix C: Buy America Waivers

Inconsistency With the Public Interest

[STAA, §165 (b)(1) and 49 CFR Part 661, §661.7(b)]

The Administrator may waive the Buy America requirements if the Administrator finds that compliance with the requirements would be inconsistent with the public interest. This includes waivers for prototype vehicles and first time items being produced by foreign firms relocating facilities to the United States.

This waiver may be granted for end products, as well as for components and subcomponents. If a component or subcomponent is granted this waiver, the component or subcomponent is considered to be of domestic origin and its entire cost may be used for the purposes of calculating the domestic content requirement.

Nonavailability of Materials

[STAA, §165 (b)(2) and 49 CFR Part 661, §661.7(c)]

The Administrator may waive the Buy America requirements if the Administrator finds that the item for which a waiver is being requested is not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality.

This waiver will be granted if no responsive and responsible bids are received offering the item in the United States. It will also be granted in the case of sole source procurements.

If a component or subcomponent is granted this waiver, the component or subcomponent is considered to be of domestic origin and its entire cost may be used for the purposes of calculating the domestic content requirement.

Price-Differential

[STAA, §165 (b)(4) and 49 CFR Part 661, §661.7(d)]

The Administrator may waive the Buy America requirements if the Administrator finds that a domestic product will cost more than 25 percent of an equivalent foreign product.

The 25 percent applies to the cost of an end product, **not** the cost of the contract. The preamble to the Rule states, "the price differential is not to be applied to the overall contract between the grantee and its supplier, but to the comparative costs of each individual item (end product) being supplied." Therefore, if the inclusion of a domestic component increases the cost of a bus by more than 25 percent over that if a foreign-manufactured component were used, then a waiver may be given.

Excepted Articles, Materials, and Supplies

[49 CFR Part 661, §661.7 (App. A)(a)]

Title 48 of the CFR, Part 25, Section 104 (Federal Acquisition Regulation; Foreign Acquisition, "Excepted Articles, Materials, and Supplies") establishes articles, materials, and supplies exempt from the Buy America requirements and may be amended from time to time. This waiver falls under the waivers set forth in STAA, §165 (b)(1) and (b)(2).

Fifteen Passenger Chrysler Vans and Wagons [49 CFR Part 661, §661.7 (App. A)(b) and (c)]

Fifteen passenger vans and wagons produced by the Chrysler Corporation are exempt from the Buy America final assembly requirement only; the domestic content requirement is not waived. This waiver falls under the waiver set forth in STAA, §165 (b)(1).

Microcomputer Equipment [49 CFR Part 661, §661.7 (App. A)(d)]

Microcomputer equipment, including software, from a foreign source is exempt from the Buy America requirements. This waiver falls under the waiver set forth in STAA, §165 (b)(1) and (b)(2).

Foreign Spare Parts [49 CFR Part 661, §661.11 (App. A)(a)]

The Buy America requirements are waived for spare parts from a foreign source, if the total cost of the foreign spare parts being procured is 10 percent or less of the contract value. This exception applies only if the spare parts are being procured with the end products in which they will be installed.

Appendix D: Sample Visual Inspection and Road Test Sheets

Sample Visual Inspection Test Sheet

Guide for Inspection:

Coach
Manufacturer _____

The Following Items Should Be Inspected on
Every Coach of Each Order

Coach
Number _____
Test
Location _____

Item	Requirement	Inspection Instruction	Result	Inspector/ Date	Remarks/Notes
Curb Weight	Maximum curb weight of lb.	Measure on certified scale	Weight		
FMVSS Stickers	Affixed to vehicle	Locate sticker	Pass/Fail		
Finish and Color	Smooth body surfaces and paint	Visually inspect all surfaces for flaws	Pass/Fail		
Interior Panel Fastening	Absence of rough edges or surfaces	Visually inspect for proper installation	Pass/Fail		
Towing Devices	Provision of towing eyes (front/rear)	Verify presence of towing eyes	Pass/Fail		
Door Control	Opening time of sec.	Verify door opening time frame	Pass/Fail		
Interior Lighting	Lighting operable without engine	Switch on all interior lights	Pass/Fail		
Exterior Lighting	All vehicle lights operable	Switch on and verify lamps are on	Pass/Fail		
Fuel Tank	Fill rate and filler location	Inspect filler for easy	Pass/Fail		

		access and check fill rate			
Chassis	Welds, axles, suspension, steering, wheels, and brakes	Inspect for leaks, and interference. Check fluid levels, welds, undercoating, air lines, brake slack, and lug nuts	Pass/Fail		
Electrical	Wiring and junction boxes	Inspect for loose or stretched wires	Pass/Fail		
Batteries	Secured and polarized wiring access for jump start	Inspect compartment and jumper cable access	Pass/Fail		
HVAC	Capacity and performance	Operate AC, check compressor, condenser, flow, and temperature	Pass/Fail		
Wheelchair Access	Clear lift or ramp access, and securement area	Operate lift or ramp, inspect operation, measure areas	Pass/Fail		
Power Plant	Mounting and arrangement	Check for loose lines, leaks, and noises. Check fluid levels, belt alignment, and cap fit	Pass/Fail		

Sample Road Test Sheet

Guide for Inspection:

Coach
Manufacturer _____

The Following Items Should Be Inspected on
Every Coach of Each Order

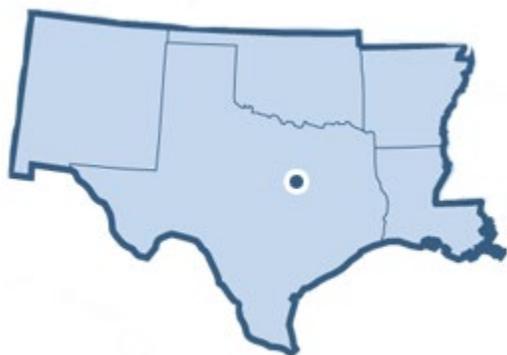
Coach
Number _____
Test
Location _____

Item	Requirement	Inspection Instruction	Result	Inspector/Date	Remarks/Notes
Engine	N/A	Record low idle, fast idle, and high idle speeds	Low Fast High		
Service Brakes	Stopping distance	Verify function and indicator, check for pulling to either side	Pass/Fail		
Parking Brake	N/A	Verify indicator, and no movement	Pass/Fail		
Turning Effort	Steering wheel torque	Check effort with coach stopped	Pass/Fail		
Turning Radius	Not to exceed at corner of body	Verify turning radius in both directions	Pass/Fail		
Acceleration	rate from 0 to mph	Verify acceleration on smooth road	Pass/Fail		
Resonance	Absence of audible and/or visible vibrations	Operate coach at various speeds, check for vibrations and rattles	Pass/Fail		
Windshield Wipers	Evenly deposited wash fluid	Operate coach at safe speed over 40 mph, check coverage, parking position, and	Pass/Fail		

		wiper frequency			
Power Plant	N/A	Check for leaks under coach and in engine compartment, check for abnormal noises	Pass/Fail		
HVAC	Interior temperature	Operate system, check internal and ambient temp.	Int. Amb.		
Door Control	Accelerator and brake interlocks	At speeds less than 10 mph, verify accelerator and brake interlocks with door open	Pass/Fail		
General	N/A	During testing, observe any abnormalities in ride and handling of coach	Pass/Fail		

Region 6

Areas Served



Texas, Oklahoma, Arkansas, Louisiana, and New Mexico

Profile

Welcome to FTA and Region 6. We are proud of the job being done by FTA and our Regional Office where excellent customer service is a top priority. The Region serves the Southwest area of the country and includes the states of Texas, New Mexico, Arkansas, Oklahoma and Louisiana. Organizationally, Region 6 consists of a Regional office in Ft. Worth, Texas. The total staff complement is 20. We are customer driven, so please feel free to contact us at any time. We look forward to helping you plan, apply, execute, and complete transit projects that enhance the quality of life in your communities.

Historical Data (2008)

Region 6 provided \$690,347,455 in federal funding, awarding 320 grants in 2008. The region manages more than 830 active grants with 126 grantees totaling over \$4.45 billion in federal funds. Current data for each State can be found in the FTA [Data Dashboard](#).

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