

§ 661.13 Grantee responsibility.

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

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

(1) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate, submission of certificates of both compliance and non-compliance, or failure to submit any certification), may submit to the FTA Chief Counsel within ten (10) days of bid opening of submission or a final offer, a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification in accordance with 28 U.S.C. 1746, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will also submit evidence of intent, such as information about the origin of the product, invoices, or other working documents. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

(i) The FTA Chief Counsel may request additional information from the bidder or offeror, if necessary. The grantee may not make a contract award until the FTA Chief Counsel issues his/her determination, except as provided in § 661.15(m).

(ii) [Reserved]

(2) For negotiated procurements, compliance with the Buy America requirements shall be determined on the basis of the certification submitted with the final offer or final revised proposal. However, where a grantee awards on the basis of initial proposals without discussion, the certification submitted with the initial proposal shall control.

(3) Certification based on ignorance of the proper application of the Buy America requirements is not an inadvertent or clerical error.

(c) Whether or not a bidder or offeror certifies that it will comply with the applicable requirement, such bidder or offeror is bound by its original certification (in the case of a sealed bidding procurement) or its certification submitted with its final offer (in the case of a negotiated procurement) and is not permitted to change its certification after bid opening or submission of a final offer. Where a bidder or offeror certifies that it will comply with the applicable Buy America requirements, the bidder, offeror, or grantee is not eligible for a waiver of those requirements.

[56 FR 932, Jan. 9, 1991, as amended at 68 FR 9799, Feb. 28, 2003; 71 FR 14117, Mar. 21, 2006]

§ 661.15 Investigation procedures.

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

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

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

(d) When FTA determines under paragraph (b) or (c) of this section to conduct an investigation, it requests that the grantee require the successful bidder or offeror to document its compliance with its Buy America certificate. The successful bidder or offeror has the burden of proof to establish that it is in compliance. Documentation of compliance is based on the specific circumstances of each investigation, and