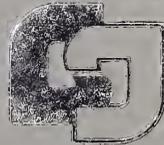


EXISTING FEDERAL REGULATIONS

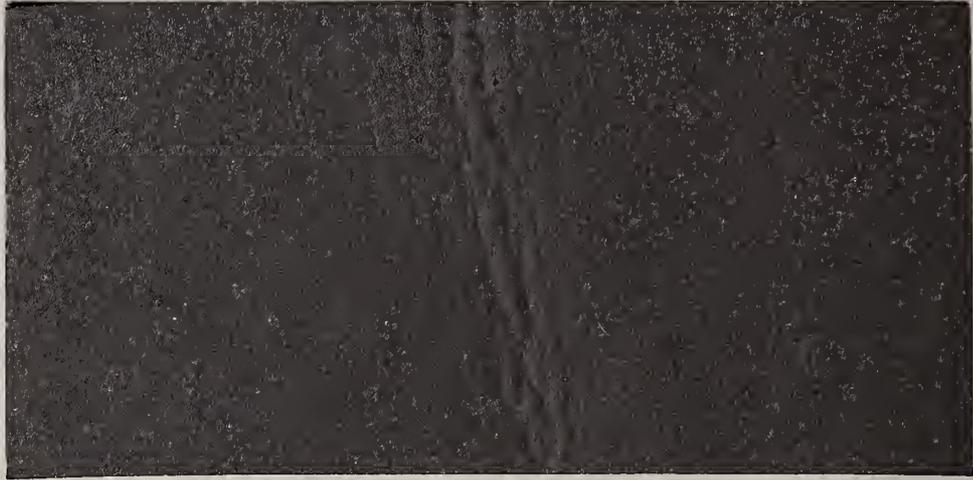
San Diego Trolley Implementation Process Evaluation  
Working Paper #4

May 1982

San Diego



ASSOCIATION OF  
GOVERNMENTS



EXISTING FEDERAL REGULATIONS

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## I. INTRODUCTION

The San Diego Trolley is unique in many ways. However, it has received most notoriety for rapid implementation, low cost of the system, and lack of federal participation. Low construction costs and rapid implementation were in part achieved because the Metropolitan Transit Development Board (MTDB) avoided federal financial involvement with the attendant procedures, regulations, and requirements. There were other reasons as well, which included an opportune railroad abandonment proceeding and strong support from the State Legislature.

The Guideway Implementation Process Evaluation study calls for the determination of additional costs and timing incurred as a direct result of the government mandated requirements. A base case will be established complying with union contract provisions, recognized standards, and minimum requirements of a prudent operator. The establishment of baseline standards means that there would be a cost and timing reduction if the guideway builder were free to design specifications based solely on construction standards and good judgment. Only requirements that are above these standards actually have a cost impact imposed by federal regulations. In this study, MTDB process is essentially being used as a base case from which incremental time and cost increases required by federal regulations will be determined.

### Methodology

For the purpose of determining impacts of federal regulations, it was necessary to detail specific requirements placed on the guideway implementation process by a given regulation or set of regulations. All existing regulations, legislation, and administrative orders of the federal government which affect the process are compiled and summarized. These summarizations are presented in the Catalog of Federal Regulations.

The regulations were identified initially on an agency basis, using the Code of Federal Regulations, the United States Code, the Federal Register,

and various administrative and general orders. The regulations were used to produce the Functional Responsibility Matrix. The Functional Responsibility Matrix shows the various agencies and their involvement in the guideway implementation process.

## II. FUNCTIONAL RESPONSIBILITY MATRIX

The Functional Responsibility Matrix was designed to show various agencies and their level of responsibility in the guideway implementation process. The Functional Responsibility Matrix was developed by reviewing existing federal regulations, legislation, and administrative orders. Figure 1, the Functional Responsibility Matrix, shows the complexity of the guideway implementation process when the federal government participates in the project. At least 35 federal agencies or offices are directly or indirectly involved in the project. This includes all phases of the project from the initial planning efforts through guideway operations.

When the general responsibility of an agency is to review and assure that the project conforms to that agency's rules and regulations and statutory requirements, the matrix is marked "G." When an agency must statutorily approve a program or project the matrix is marked "A." When the primary responsibility of an agency is to assure that certain regulatory requirements are met the matrix is marked "P." When an agency has a specific plan or regulation which it is required to implement the matrix is marked "S." When a local agency(ies) is responsible for the guideway operation the matrix is marked "L." All agencies which provide funds for the project are marked "F."

Most of the San Diego Trolley implementation process was completed with a minimal degree of federal participation. However, the San Diego and Arizona Eastern Railway acquisition and rehabilitation required working with the Interstate Commerce Commission, the Federal Railroad Administration, and the Federal Trade Commission. Also, early transportation planning efforts in the San Diego region were supported by numerous federal agencies as documented in SANDAG's San Diego Trolley Implementation Process Evaluation, Transportation Planning in San Diego 1950-1975, Working Paper Number 3.

FUNCTIONAL RESPONSIBILITY MATRIX

The matrix shows various agencies and their level of responsibility in the guideway implementation process. When the general responsibility of an agency is to review and assure that the project conforms to the agency's rules and regulations and statutory requirements, the matrix is marked 'G'. When an agency must statutorily approve a program or project, the matrix is marked 'A'. When the primary responsibility of an agency is to assume that certain regulatory requirements are met, the matrix is marked 'P'. When an agency has a specific plan or regulation which it is required to implement, the matrix is marked 'S'. When a local agency(ies) is responsible for the guideway operation the matrix is marked 'L'. All agencies which provide funds for the project are marked 'F'.

AGENCY	PLANNING					DESIGN				CONSTRUCTION				OPERATION
	Initial Guideway Planning	Alternatives Analysis	Environmental Review	Preliminary Engineering	Preferred Alternative Engineering	Final Engineering Architecture	Capital Grant	Right Of Way Acquisition	Railroad Acquisition/Rehabilitation	Construction	Procurement	OPERATION		
Local Concern	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	L		
State Transportation Agency	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F		
State Public Services Commission (PVC)												A,P		
State Engineer												A,P		
U.S. Department of Transportation	S	S	S	S	S	S	S	S	S	S	S	S		
A. Urban Mass Transportation Administration														
1) Office of Chief Counsel														
Offices of the Associate Administrator for:														
2) Policy and Program Development	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	G		
3) Transit Assistance	G	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,S,P	A,P,S,F		
4) Transportation Planning	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	G		
5) Technology Development & Deployment	S	S	S	S	S	S	S	S	S	S	S	S		
6) Office of Civil Rights														
B. Federal Highway Administration	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	A,P,S,F	S		
C. Office of the Assistant Secretary for Administration	G	G	G	G	G	G	G	G	G	G	G	G		
D. Contract Appeals Board	G	G	G	G	G	G	G	G	G	G	G	G		
E. Office of the General Counsel	S	S	S	S	S	S	S	S	S	S	S	S		
F. Office of Civil Rights	S	S	S	S	S	S	S	S	S	S	S	S		
G. Assistant Secretary for Budget & Programs	G	G	G	G	G	G	G	G	G	G	G	G		
H. Federal Aviation Administration	S	S	S	S	S	S	S	S	S	S	S	S		
I. Assistant Secretary for Governmental Affairs	G	G	G	G	G	G	G	G	G	G	G	G		
J. Federal Railroad Administration														
Office of Management & Budget	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S		
General Accounting Office	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S		
General Services Administration	G	G	G	G	G	G	G	G	G	G	G	G		
Department of Justice/Attorney General	G	G	G	G	G	G	G	G	G	G	G	G		
Comptroller General	G	G	G	G	G	G	G	G	G	G	G	G		
Department of Commerce	S	S	S	S	S	S	S	S	S	S	S	S		
Department of Labor	S	S	S	S	S	S	S	S	S	S	S	S		
Department of Housing & Urban Development	S	S	S	S	S	S	S	S	S	S	S	S		
Interstate Commerce Commission	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S		
Environmental Protection Agency	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S	G,S		
Council on Environmental Quality	S	S	S	S	S	S	S	S	S	S	S	S		
Internal Revenue Service	S	S	S	S	S	S	S	S	S	S	S	S		

(Continued involvement in Joint FHWA/UMTA projects only)

- 1 The environmental review process requires that the Departments of Agriculture, Health, Education, and Welfare, and the Interior approve the project
- 2 New engineering/architectural designs become property of the U.S. Government unless otherwise agreed upon. These designs must be registered with the U.S. Patent Office.
- 3 The Federal Trade Commission must approve the railroad acquisition and/or rehabilitation
- 4 Procurement policies and contracts are subject to additional review and coordination with the specific plans issued by the Office of Federal Procurement Policy, the U.S. Patent Office, and the Federal Trade Commission

Legend: G = General Responsibility  
 A = Approval Required  
 P = Primary Responsibility  
 S = Specific Plan  
 L = Local Concern  
 F = Funds Project



### III. CATALOG OF FEDERAL REGULATIONS

One of the major technical tasks of the Guideway Implementation Process Evaluation was to compile all regulations, legislation, and administrative orders of the U.S. government which affect the guideway implementation process. Once compiled, each regulation was reviewed to determine the purpose of the citation, agency responsibilities, and procedural guidelines.

The regulations are catalogued to identify the nature and extent which they impact the various phases of the process. All regulations are summarized on a standardized, single-page form. The single page form covers a regulation digested at the sub-part level. These summaries are included in the following section entitled "Catalog of Regulations."

The most significant regulations are catalogued to show the purpose of the citation, agency responsibilities, procedural guidelines, requirements, and related regulations. The resulting catalog serves as a condensed and usable summary of what is contained in thousands of complex sections, paragraphs and sub-parts of legal and technical terminology in various administrative and general orders, regulations, and federal legislation. The summaries of these regulations are included in the following section entitled "Catalog of Significant Regulations."

Together the catalogues represent a single source of information in summary form for the federal regulations pertaining to the guideway implementation process.



### III. CATALOG OF FEDERAL REGULATIONS

1. Uniform Relocation Assistance and Real Property Acquisition Policies of 1970
2. Major Urban Mass Transportation Investments
3. Policy Towards Rail Transit
4. Policy on Major Urban Mass Transportation Investments and Policy Towards Rail Transit
5. Third-Party Contracting Guidelines
6. Evaluation, Review, Coordination of Federal and Federally Assisted Programs and Projects
7. Uniform Administration Requirements for Grants-In-Aid to State and Local Government
8. Historic Preservation
9. Federal and Federally Assisted Programs and Projects
10. Transportation Improvement Program
11. Environmental Impact and Related Procedures
12. Mass Transit and Special Use Highway Projects
13. Davis-Bacon Act
14. Work Hours and Safety Standards
15. CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Protection Act of 1966
16. Walsh-Healy "Breach of Contract" Act
17. Federal Anti-Kickback Act
18. Civil Rights Act of 1964
19. Demonstration Cities and Metropolitan Development Act of 1966
20. National Environmental Policy Act of 1969
21. Minority Business Enterprise in DOT Programs
22. Transportation for the Elderly and Handicapped Persons
23. Reporting Requirements for Final Guideway and Commuter Rail Systems
24. Buy America
25. Railroad Acquisition, Control, Merger, Consolidation Project, Trackage Rights and Lease Procedures
26. Construction, Extension, Acquisition or Operation of Railroad Lines

SUBJECT: Uniform Relocation Assistance and Real Property Acquisition  
Policies of 1970

CITATION: DOT 4600.9B

EFFECTIVE: 1970

PRINCIPAL AGENCY: DOT, all other federal agencies

COORDINATING AGENCY: All federal agencies

PURPOSE: To establish a uniform policy for the fair and equitable treatment  
of persons displaced as a result of federal and federally assisted programs  
in order that such persons shall not suffer disproportionate injuries as  
a result of programs designed for the benefit of the public as a whole.

IMPACT PHASES:

Capital Grants  
Right-of-Way Acquisition  
Railroad Acquisition  
Construction

SUBJECT: Major Urban Mass Transportation Investments\*

CITATION: FR Doc. 76-27567

EFFECTIVE DATE: September 21, 1976

PRINCIPAL AGENCY: Urban Mass Transportation Administration

COORDINATING AGENCIES: States, MPO's

PURPOSE: Establishes federal policy on major urban mass transportation investments assisted under the Urban Mass Transportation Act. A major transportation investment is considered to be any project which involves new construction or extension of a fixed guideway system (rapid rail, light rail, commuter rail, automated guideway transit) or a busway. Projects which demonstrate advanced technology, as well as rehabilitation and modernization projects, are not included. The policy integrates the environmental impact assessment and the alternatives analysis processes.

IMPACTED PHASES:

Alternatives Analysis

Environmental Review

\* Expanded version included in Section IV, Catalog of Significant Regulations, page 37.

SUBJECT: Policy Towards Rail Transit

CITATION: FR 78-5813

EFFECTIVE: March 6, 1978

PRINCIPAL AGENCY: UMTA

COORDINATING AGENCY: MPO

PURPOSE: To furnish applicants and the public with a more explicit statement of principles and procedures governing the evaluation and award of federal grants for the design and construction of rail transit facilities.

IMPACTED PHASES:

Initial Guideway Planning  
Alternatives Analysis  
Environmental Review  
Preliminary Engineering  
Preferred Alternative Engineering  
Final Engineering/Architecture  
Capital Grant

SUBJECT: Policy on Major Urban Mass Transportation Investments and  
Policy Toward Rail Transit\*

CITATION: FR Doc. 80-33695

EFFECTIVE DATE: October 29, 1980

PRINCIPAL AGENCY: UMTA

COORDINATING AGENCY: State, MPO's

PURPOSE: Provides two revisions to the Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit. These revised procedures fund more detailed studies of alternatives presented in the AA/DEIS. Further, UMTA may fund preliminary engineering following the circulation of the alternatives analysis draft (EIS) on the locally preferred alternative as well as other promising alternatives to provide more accurate information for the FEIS.

IMPACTED PHASES:

Alternatives Analysis  
Environmental Review  
Preliminary Engineering  
Preferred Alternative Engineering

\* Expanded version included in Section IV, Catalog of Significant Regulations, page 39.

SUBJECT: Third Party Contracting Guidelines\*

CITATION: UMTA Circular C4220.1

EFFECTIVE DATE: August 6, 1979

PRINCIPAL AGENCY: UMTA

COORDINATING AGENCIES: OMB, Comptroller General, EPA

PURPOSE: Provides amplifying guidelines and requirements for UMTA grant recipients in procuring and administering third-party contracts.

IMPACTED PHASES: All Phases

\* Expanded version included in Section IV, Catalog of Significant Regulations, page 44.

SUBJECT: Evaluation, Review, Coordination of Federal and Federally Assisted Programs and Projects

CITATION: OMB Circular A-95

EFFECTIVE: January 13, 1976

PRINCIPAL AGENCY: OMB

COORDINATING AGENCIES: All federal agencies, state agencies, areawide clearinghouses

PURPOSE: Furnishes guidance to federal agencies for cooperation with state and local governments in the evaluation, review, and coordination of federal and federally assisted programs and projects.

IMPACTED PHASES: All Phases

SUBJECT: Uniform Administration Requirements for Grants-In-Aid to State  
and Local Governments\*

CITATION: OMB Circular A 102 (Attachment O - Revised)

EFFECTIVE DATE: August 1, 1979

PRINCIPAL AGENCY: OMB

COORDINATING AGENCY: DOT, OFPP, Office of Installation and Logistics

PURPOSE: Establishes standards and guidelines for the procurement of  
supplies, equipment, construction and services for federal assistance  
programs.

IMPACTED PHASES: All Phases

\* Expanded version included in Section IV, Catalog of Significant Regulations,  
page 41.

SUBJECT: Historic Preservation

CITATION: 16 USC 461 and 470 et seq

EFFECTIVE: 1966

PRINCIPAL AGENCY: Council on Historic Preservation

COORDINATING AGENCIES: Any federal agency or federally assisted agency

PURPOSE: The effect of an undertaking on any district, site, building, structure, or object that is included in the National Register shall be considered by the appropriate agency prior to the expenditure of federal funds. Said agency shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the project.

IMPACTED PHASES:

- Initial Guideway Planning
- Environmental Review
- Preliminary Engineering
- Preferred Alternative Engineering
- Final Engineering/Architecture
- Construction

SUBJECT: Federal and Federally Assisted Programs and Projects

CITATION: 23 CFR 420

EFFECTIVE: April 14, 1978

PRINCIPAL AGENCY: FHWA, UMTA, DOT

COORDINATING AGENCY: OMB, State, MPO

PURPOSE: To implement the regulations in OMB Circular No. A-95 which furnishes guidance to federal agencies for cooperation with state and local governments in the evaluation, review, and coordination of federal and federally assisted programs and projects.

IMPACTED PHASES: All phases

SUBJECT: Transportation Improvement Program

CITATION: 23 CFR 450

EFFECTIVE: October 17, 1975

PRINCIPAL AGENCIES: FHWA, UMTA

COORDINATING AGENCIES: MPO, State

PURPOSE: Issues requirements that each urbanized area, as a condition to the receipt of federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area.

IMPACTED PHASES: All Phases

SUBJECT: Environmental Impact and Related Procedures\*

CITATION: 23 CFR 771; 49 CFR 622

EFFECTIVE DATE: October 30, 1980

PRINCIPAL AGENCIES: UMTA, FHWA, DOT

COORDINATING AGENCIES: CEQ; EPA; Areawide Clearinghouses; State Historical Preservation Agencies; Advisory Council on Historic Preservation; Department of Interior; Department of Agriculture; Department of Housing and Urban Development; Department of State

PURPOSE: Prescribes all FHWA, UMTA and DOT requirements under the National Environmental Protection Act for processing transportation projects.

IMPACTED PHASES: All Phases

\* Expanded version included in Section IV, Catalog of Significant Regulations, page 49.

SUBJECT: Mass Transit and Special Use Highway Projects

CITATION: 23 CFR 810

EFFECTIVE: September 20, 1977

PRINCIPAL AGENCIES: FHWA, UMTA

COORDINATING AGENCIES: MPO, Governor

PURPOSE: The purpose of the regulation is to allow the FHWA to approve various highway public mass transportation improvements and special use highway facilities as Federal-Aid Highway projects.

IMPACTED PHASES:

- Alternatives Analysis
- Preliminary Engineering
- Preferred Alternative Engineering
- Final Engineering/Architecture
- Capital Grant
- Right-of-Way Acquisition
- Construction

SUBJECT: Davis-Bacon Act (Rate of Wages for Laborers and Mechanics)

CITATION: 40 USC 276a-a7

EFFECTIVE DATE: April 3, 1931 (enacted March 3, 1931)

PRINCIPAL AGENCIES: Comptroller General, Department of Labor

COORDINATING AGENCIES: All agencies of the United States

PURPOSE: The purpose of the Act is to protect employees from substandard earnings by fixing floor under wages on government projects.

IMPACTED PHASES:

Preliminary Engineering  
Preferred Alternative Engineering  
Final Engineering/Architecture  
Capital Grant  
Railroad Rehabilitation  
Construction  
Procurement  
Operations

SUBJECT: Work Hours and Safety Standards

CITATION: 40 USC 327 to 333

EFFECTIVE DATE: October 13, 1962 (enacted August 13, 1962)

PRINCIPAL AGENCY: Department of Labor, Comptroller General

COORDINATING AGENCIES: All agencies of the United States

PURPOSE: Establishes standard workday and standard workweek; overtime compensation; contractual conditions; liability of employers for violation; withholding funds to satisfy liabilities of employers for contract work which may require or involve the employment of laborers and mechanics.

IMPACTED PHASES:

Preferred Alternative Engineering

Final Engineering/Architecture

Capital Grant

Railroad Rehabilitation

Construction

Procurement

Operations

SUBJECT: CEQ Regulations for Implementing the Procedural Provisions of  
the National Environmental Protection Act of 1966

CITATION: 40 CFR 1500 et seq

EFFECTIVE DATE: November 28, 1978

PRINCIPAL AGENCY: CEQ

COORDINATING AGENCIES: All agencies of the federal government

PURPOSE: The National Environmental Policy Act is our basic national charter for protection of the environment. It establishes policy, sets goals, and provides a means for carrying out the policy. It contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act.

IMPACTED PHASES: All Phases

SUBJECT: Walsh-Healy "Breach of Contract" Act

CITATION: 41 USC 37

EFFECTIVE DATE: June 30, 1936

PRINCIPAL AGENCIES: Comptroller General, Department of Labor

COORDINATING AGENCIES: All agencies of the United States

PURPOSE: The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. No contracts shall be awarded to such persons or firms until three years have elapsed from the date such breach occurred.

IMPACTED PHASES:

- Initial Guideway Planning
- Alternatives Analysis
- Preliminary Engineering
- Preferred Alternative Engineering
- Final Engineering/Architecture
- Capital Grant
- Right-of-Way Acquisition
- Railroad Acquisition Rehabilitation
- Construction
- Procurement
- Operations

SUBJECT: Federal Anti-Kickback Act

CITATION: 41 USC 51-54

EFFECTIVE DATE: September 2, 1960

PRINCIPAL AGENCY: General Accounting Agency

COORDINATING AGENCIES: Any department, agency, or establishment of the United States

PURPOSE: Prohibits kickback payment by subcontractor to any agent of prime contractor and clearly expresses policy decidedly hostile to them by allowing government to rid itself of prime contracts tainted by kickbacks.

IMPACTED PHASES:

Initial Guideway Planning  
Alterantives Analysis  
Preliminary Engineering  
Preferred Alternative Engineering  
Final Engineering/Architecture  
Capital Grants  
Right-of-Way Acquisition  
Railroad Acquisition/Rehabilitation  
Construction  
Procurement  
Operations

SUBJECT: Civil Rights Act of 1964

CITATION: 42 USC 2000d-d4

EFFECTIVE: September 24, 1965

PRINCIPAL AGENCY: DOJ

COORDINATING AGENCY: All federal, state, and local agencies

PURPOSE: No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity.

IMPACTED PHASES: All Phases

SUBJECT: Demonstration Cities and Metropolitan Development Act of 1966

CITATION: 42 USC 3301

EFFECTIVE: June 30, 1967

PRINCIPAL AGENCY: OMB

COORDINATING AGENCY: Areawide Clearinghouse, all other federal agencies

PURPOSE: All applicants for federal loans or grants to assist in planning and construction within any metropolitan area shall be submitted for review to any areawide agency.

IMPACTED PHASES: All Phases

SUBJECT: National Environmental Policy Act of 1969

CITATION: 42 USCA 4321 et seq

EFFECTIVE: 1969

PRINCIPAL AGENCY: EPA

COORDINATING AGENCY: All federal, state and local governments

PURPOSE: It is the continuing policy of the federal government, in cooperation with state and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

IMPACTED PHASES: All Phases

SUBJECT: Minority Business Enterprise in DOT Programs

CITATION: 49 CFR 23

EFFECTIVE: September 22, 1976

PRINCIPAL AGENCY: DOT

COORDINATING AGENCIES: Department of Justice, Attorney General, State  
and Local Concern

PURPOSE: All applicants and recipients of Department of Transportation  
assisted contracts shall implement a Minority Business Enterprise  
program which shall be approved by DOT.

IMPACTED PHASES: All Phases

SUBJECT: Transportation for Elderly and Handicapped Persons

CITATION: 49 CFR 609

EFFECTIVE DATE: April 30, 1976

PRINCIPAL AGENCY: UMTA, FHWA

COORDINATING AGENCY: Agencies receiving federal financial assistance

PURPOSE: To establish formally the requirements of UMTA on transportation for elderly and handicapped persons. Applies to all planning, capital and operating assistance projects receiving federal financial assistance under sections 3, 5, or 9 of the UMT Act of 1964 and non-highway public mass transportation projects receiving federal financial assistance under 23 CFR 103 and 23 CFR 142 which applies to fixed facilities and vehicles.

IMPACTED PHASES: All Phases

SUBJECT: Reporting Requirements for Final Guideway and Commuter  
Rail Systems

CITATION: 49 CFR 630 Appendix A

EFFECTIVE DATE: December 18, 1978

PRINCIPAL AGENCY: UMTA

COORDINATING AGENCY: MPO

PURPOSE: To accurately report data for federal fiscal year apportionment of Section 5 funds for fixed guideway and commuter rail systems. Data required are the route miles of fixed guideway existing within the confines of the urbanized area at the end of the standard data collection period.

IMPACTED PHASES: All Phases

:

SUBJECT: Buy America\*

CITATION: 49 CFR 660

EFFECTIVE DATE: December 6, 1978

PRINCIPAL AGENCIES: UMTA

COORDINATING AGENCIES: UMTA assisted projects

PURPOSES: To define terms and procedures guiding the application of Section 401, "Buy America", of the Surface Transportation Assistance Act of 1978, P.L. 95-599. These regulations apply to all federally-assisted procurements under grants, loans, and cooperative agreements made pursuant to the UMT Act of 1964 for equipment and construction of facilities in which a third-party contract exceeds \$500,000.

IMPACTED PHASES:

Capital Grant  
Right-of-Way Acquisition  
Railroad Acquisition/Rehabilitation  
Construction  
Procurement

\* Expanded version included in Section IV, Catalog of Significant Regulations, page 52.

SUBJECT: Railroad Acquisition, Control, Merger, Consolidation Project,  
Trackage Rights and Lease Procedures

CITATION: 49 CFR 1111

EFFECTIVE: March 17, 1977

PRINCIPAL AGENCY: ICC

COORDINATING AGENCIES: DOT, FRA, Attorney General, FTC, DOL, Governor,  
PUC

PURPOSE: Acquisition procedures for railroads not in reorganization and  
for lines of railroads in reorganization. Include contents of application,  
exhibits, definitions, procedures, and types of transactions.

IMPACTED PHASES: Railroad Acquisition/Rehabilitation

SUBJECT: Construction, Extension, Acquisition or Operation of Railroad  
Lines

CITATION: 49 CFR 1120

EFFECTIVE: December 20, 1967

PRINCIPAL AGENCY: ICC

COORDINATING AGENCIES: Governor, PUC, MPO, Justice Department

PURPOSE: Issues application requirements for certificates of convenience  
and necessity authorizing construction, extension, acquisition, or  
operation of railroads.



#### IV. CATALOG OF SIGNIFICANT REGULATIONS

1. Major Urban Mass Transportation Investments
2. Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit
3. Uniform Administration Requirements for Grants-In-Aid to State and Local Governments
4. Third-Party Contracting Guidelines and Special Guidelines for Rail Transit Equipment Procurement
5. Environmental Impact and Related Procedures
6. Buy America



## CATALOG OF REGULATIONS

### San Diego Trolley Implementation Evaluation

SUBJECT: Major Urban Mass Transportation Investments  
CITATION: FR Doc. 76-27567  
EFFECTIVE DATE: September 21, 1976  
ENABLING STATUTES: Urban Mass Transportation Act of 1964; National Environmental Policy Act of 1969  
PRINCIPAL AGENCY: Urban Mass Transportation Administration  
COORDINATING AGENCIES:

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PURPOSE: Establishes federal policy on major urban mass transportation investments assisted under the Urban Mass Transportation Act. A major transportation investment is considered to be any project which involves new construction or extension of a fixed guideway system (rapid rail, light rail, commuter rail, automated guideway transit) or a busway. Projects which demonstrate advanced technology, as well as rehabilitation and modernization projects are not included. The policy integrates the environmental impact assessment and the alternatives analysis processes.

#### RESPONSIBILITIES:

- Applicant:
1. Prepare AA, Phase I document.
  2. Prepare AA, Phase II/DEIS.
  3. Prepare report on preferred alternative.
  4. Hold public hearing on AA/DEIS.
  5. Hold public hearing on preliminary engineering contract (can be combined with #4).
- UMTA:
1. Review and comment on all documents.
  2. Circulate DEIS to federal agencies.
  3. Make funding determination.

PROCEDURE:

1. Prepare and submit Phase I alternatives analysis.
2. Prepare and submit Phase II alternatives analysis and DEIS (a single document) to UMTA.
3. Simultaneously, the Applicant shall designate (in a separate document) the preferred alternative.
4. UMTA review of alternatives analysis and DEIS (normally completed within 90 days).
5. Thirty day circulation period.
6. During the circulation period, the Applicant will hold a public hearing.
7. UMTA and the Applicant will begin preparation of a final EIS on a recommended alternative and address questions and comments on the DEIS.
8. Thirty day circulation period for the FEIS.
9. Public Hearing on preliminary engineering.
10. Execution of preliminary engineering.
11. Preparation and submittal of a capital grant application for the construction of the project, including final engineering and right-of-way acquisitions.
12. UMTA funding commitment.

OTHER REQUIREMENTS:

1. The alternatives analysis shall be part of a comprehensive transportation planning process.
2. Major mass transportation investments shall be consistent with the comprehensive long range plan.
3. Proposed fixed guideway systems should be implemented incrementally.
4. Initial guideway segments should be justified within 15 years.
5. Each segment should be capable of justification on its own merit.
6. The alternatives analysis should assess:
  - a. Capital and operation costs
  - b. Ridership
  - c. Efficiency and productivity
  - d. Effects of modal choice, level of automobile use
  - e. Environmental impacts and energy consumption
  - f. Impact on land use and development patterns
  - g. Extent of neighborhood disruption and displacement
  - h. Job creation impact
  - i. Factors of local importance.
7. Plans for a fixed guideway project should include transportation system management actions.
8. The public, local elected officials, and all levels of government should be involved in the alternatives analysis process.

RELATED REGULATIONS:

Transportation Systems Management actions;  
Comprehensive long range transportation plans.

CATALOG OF REGULATIONS

San Diego Trolley Implementation Evaluation

SUBJECT: Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit

CITATION: FR Doc. 80-33695

EFFECTIVE DATE: October 29, 1980

ENABLING STATUTES:

PRINCIPAL AGENCY: Urban Mass Transportation Agency

COORDINATING AGENCIES: Unchanged

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PURPOSE: Provides two revisions to the Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit. These revised procedures fund more detailed studies of alternatives presented in the AA/DEIS. Further, UMTA may fund preliminary engineering following the circulation of the alternatives analysis draft (EIS) on the locally preferred alternative as well as other promising alternatives to provide more accurate information for the FEIS.

RESPONSIBILITIES:

Unchanged.

- PROCEDURES:
1. After obtaining UMTA's concurrence, Applicant proceeds with:
    - a. Alternatives Analysis
    - b. Preparation of DEIS.
  2. After the end of the draft EIS circulation period, Applicant prepares a report on preferred alternative.
  3. Review of preferred alternative report and draft EIS (UMTA and public).
  4. Preliminary engineering (upon UMTA approval of alternatives report).

Policy on Major Urban Mass Transportation Investments and  
Policy Toward Rail Transit (continued)

5. During preliminary engineering stage:
  - a. Develop Final EIS
  - b. Applicant will complete these stages:
    - (1) Evidence of firm commitment of the non-federal capital share
    - (2) Plan for and gain financial commitment to necessary supportive actions to promote utilization of fixed guideway system.
6. UMTA will issue a letter of intent upon determination of action support.
7. Full funding agreement will be developed upon determination of support, including:
  - a. Level of federal contributions
  - b. Schedule of funding
  - c. Locality required to complete project and absorb additional costs.

- REQUIREMENTS:
1. The draft environmental impact statement and the results of the alternatives analysis shall be combined in a single document.
  2. All alternatives in the FEIS are presented at a comparable level of detail.
  3. Preliminary engineering should develop system cost, effectiveness, and impact information with particular attention to alternative designs, operations, location decisions, and mitigation measures.
  4. Applicants must provide evidence of firm commitment of the non-federal capital share.
  5. Specific annual contributions subject to:
    - a. The availability of appropriations
    - b. The ability of the grant recipient to use the funds effectively.

RELATED REGULATIONS/STATUTES:

41 F.R. 41512, UMTA Policy on Major Mass Transportation Investments; 23 C.F.R. Part 771, Environmental Impact and Related Procedures.

CATALOG OF FEDERAL REGULATIONS

San Diego Trolley Implementation Evaluation

**SUBJECT:** Uniform Administration Requirements for Grants-In-Aid to State and Local Governments

**CITATION:** OMB Circular A102 (Attachment O - Revised)

**EFFECTIVE DATE:** August 1, 1979

**ENABLING STATUTE:**

**PRINCIPAL AGENCY:** Office of Management and Budget

**COORDINATING AGENCIES:** Department of Transportation; Office of Federal Procurement Policy (OFPP); Office of Installations and Logistics

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**PURPOSE:** Establishes standards and guidelines for the procurement of supplies, equipment, construction and services for federal assistance programs.

**RESPONSIBILITIES:**

- Grantee:**
1. Development of procurement procedures and contracts which conform to local, state and federal law.
  2. Develop and maintain a written code of conduct.
  3. Develop written selection procedures.
  4. Insure contract conformance.
  5. Settle contractual disputes.
  6. Maintain procurement records.

- Grantor:**
1. Assist Grantee in developing, or improving procurement procedures.
  2. Certify Grantee procurement procedures to Grantee and OFPP.
  3. Development of complaint/protest administrative procedures (optional).
  4. Pre-award review and approved (see Procedure #4).

Uniform Administration Requirements for Grants-In-Aid  
to State and Local Governments (continued)

PROCEDURES (FOR CERTIFICATION):

1. Grantee develops procurement procedures.
2. Grantor evaluates and certifies procurement procedures.
3. Grantor notifies Grantee and OFPP of certification (certification is valid for 24 months).
4. Grantor pre-award review and approval under the following circumstances:
  - a.
  - b.
  - c.

OTHER REQUIREMENTS:

1. Four types of contracts permitted:
  - a. Small purchase
  - b. Competative sealed bid (formal advertising)
  - c. Competative negotiation
  - d. Non-competative negotiation.
2. Procurement Records must contain:
  - a. Rationale for the method of procurement
  - b. Rationale for the selection of contract type
  - c. Contractor selection process
  - d. Basis for cost/price.
3. Procedures must promote open and fair competition.
4. Procedures must promote small and minority business participation.
5. Solicitations must be publicized and bids solicited from an adequate number of qualified sources.
6. Solicitations must identify significant evaluation factors.
7. "Sole source" contracts are permitted only in an emergency or if there is only one possible supplier.
8. Cost analysis must be made.
9. Contract provisions required (see attachment).

RELATED REGULATIONS:

- DOT 4600.98 - Establishes compliance procedure;  
UMTA Circular C4220.1 - Third Party Contracting Guidelines.

ATTACHMENT

UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS-IN-AID

REQUIRED CONTRACT PROVISIONS

- . Contractor violations or breach of contract terms (excluding small purchases)
- . Termination of contracts in excess of \$10,000 by the Grantee
- . Conditions under which the contract may be terminated by default or circumstances beyond the control of the contractor
- . Equal Employment Opportunity (E.O. 11246)
- . Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874)
- . Compliance with the Davis-Bacon Act (40 U.S.C. 276a - a-7) required by construction contracts in excess of \$2,000
- . Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) required by construction contracts in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers
- . Patent rights, copyrights, and rights in data which arise or are developed in the course or under such contract
- . Access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract
- . Compliance with Section 306 of the Clean Air Act (42 U.S.C. 1857(a)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. Part 15)
- . Compliance with the Energy Policy and Conservation Act (P.L. 94-165)

CATALOG OF FEDERAL REGULATIONS

San Diego Trolley Implementation Evaluation

SUBJECT: Third Party Contracting Guidelines  
CITATION: UMTA Circular C4220.1  
EFFECTIVE DATE: August 6, 1979  
ENABLING STATUTE:  
PRINCIPAL AGENCY: Urban Mass Transportation Administration  
COORDINATING AGENCIES: Office of Management and Budget  
Comptroller General  
Environmental Protection Agency

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PURPOSE: Provides amplifying guidelines and requirements for UMTA grant recipients in procuring and administering third party contracts.

RESPONSIBILITIES:

- Grantee:
1. Award and Administration of Grants.
  2. Settlement of contractual and administration issues.
  3. Complete documentation, including
    - a. technical evaluation
    - b. cost/price evaluation
    - c. audit
- UMTA:
1. Review of grantees procedures; specifications.
  2. Certify grantee compliance.

PROCEDURES: Grantee - Third Party Contracts

1. Preparation of Specifications, Purchase Description or Statements of Work.
2. Presolicitation review by UMTA if:
  - a. bid over \$1 million
  - b. RFP over \$100,000
  - c. Sensitive or special interest material (i.e., )
3. Bid Expiration Date(s): can be extended for UMTA review.
4. Summary of Negotiations/Evaluations/Findings:
  - a. background
  - b. justification for type of contract
  - c. technical evaluation
  - d. cost/price analysis and audit report
  - e. prenegotiation position
  - f. procurement history
  - g. details of negotiations
5. Contract Modification or Change Orders: UMTA concurrence if:
  - a.
  - b.
  - c.
6. Contract Audit

OTHER REQUIREMENTS:

1. Two Methods of Procurement
  - a. Formal advertised procurement
  - b. Negotiated, including competitive, non-competitive and small purchase
2. Sale source must be documented
3. Force account work requires advance UMTA approval
4. Contract provisions required (see attachment #1)
5. Special Guidelines for Rail Transit Equipment Purchases (see attachment #2)

RELATED REGULATIONS:

ATTACHMENT #1

THIRD PARTY CONTRACTING GUIDELINES

REQUIRED CONTRACT PROVISIONS

	<u>Construction Contract</u>	<u>Equipment Contract</u>	<u>Professional Service</u>
<u>Advertisement and/or Invitation to Bid:</u>			
1. Equal Employment Opportunity	x	x	
2. Statement of Financial Assistance	x	x	
3. Ineligible Bidders	x	x	
4. Minority Business Enterprises (Cir. UMTA C 1165.1)	x	x	x
<u>Standard Contract Clauses:</u>			
1. Contract Changes	x	x	
2. Audit and Inspection of Records			x
3. Government Inspection	x		
4. Interest of Members of Congress	x	x	x
5. Prohibited Interests	x	x	x
6. Ineligible Contractors	x		
7. Equal Employment Opportunity		x	x
8. Nondiscrimination	x		
9. Affirmative Action	x		
10. Prime Contractor Participation	x		
11. Contract Security	x		
12. Wage Rates	x		
13. Labor Provisions	x		
14. Certified Payrolls	x		
15. Warranty of Construction	x		
16. Liquidated Damages	x		
17. Air Pollution	x	x	
18. Project Sign	x		
19. Motor Vehicle Safety and Pollution		x	
20. Price Escalation Clause	x	x	x
21. Buy American Act	x	x	
22. Cargo Preference - Use of U.S. Flag Vessels	x	x	
23. Substitution of Subcontractors (Cir. UMTA C 1165.1)	x	x	x
24. Minority Business Enterprise	x	x	x

Third Party Contracting Guidelines  
ATTACHMENT #1 (p. 2)

	<u>Construc-</u> <u>tion</u> <u>Contract</u>	<u>Equip-</u> <u>ment</u> <u>Contract</u>	<u>Profes-</u> <u>sional</u> <u>Service</u>
<u>Required Contract Provisions.</u>			
1. Clear Definition of Scope			x
2. Contract Period	x	x	x
3. Progress Reports			x
4. Subcontract Approval			x
5. Method of Payment	x		x
6. Termination of Contract	x	x	x
7. Ownership of Documents			x
8. Maintenance of Records			x
9. Nonrestrictive Clauses	x	x	
10. Maximum Compensation	x	x	x

Additional Required Documents (All Contracts)

1. Technical Evaluation
2. Cost Analysis
3. Selection Procedures
4. Type of Contract
5. Statement of Fairness and Reasonableness of Price

ATTACHMENT #2

THIRD PARTY CONTRACTING GUIDELINES

SPECIAL GUIDELINES FOR RAIL TRANSIT EQUIPMENT PROCUREMENT

Guideline:

1. Authority of Agent:
  - a. Grantee may designate one or more purchasing agents, identifying special authority in writing.
  - b. Any orders must be in writing.
  - c. Grantee must confirm orders in writing.
  - d. Purchase contracts must be specific, include schedule.
2. Change Orders:
  - a. In writing.
  - b. Seller can require a time extension.
3. Passing of Title: Must pass on (or before) delivery.
4. Loss or Damage: Responsibility of the Grantee after delivery.
5. Acceptance:
  - a. In writing.
  - b. Contract to specify acceptance criteria.
6. Indemnification clause required (see #16).
7. Liquidated damages (optional).
8. Termination for Default:
  - a. Written notice.
  - b. Can be reversed if default is not proven.
9. Excusable Delays:
  - a. Acts of God, government, Grantee.
  - b. Grantee must make reasonable schedule revisions.
10. Stop-work Orders (optional): Specific written requirements if used.
11. Changes in Law/Regulation: Required provision.
12. Approval of Subcontractors:
  - a. Notification prior to receiving bids.
  - b. Grantee must determine responsibility of subcontractors.
13. Inspection and Tests: Must be identified in bid solicitation.
14. Disputes and Claims:
  - a. Arbitration not binding on UMTA.
  - b. State law governs judicial review.
  - c. Sixty day maximum response period for claims.
15. Pre-bid Procedure:
  - a. Grantee may delay bid opening.
  - b. No amendments to solicitation within 20 days of opening.
  - c. 28 days prior to opening clarifications may be asked.
  - d. Grantee must respond no later than 17 days before opening.
  - e. Any potential bidder may appeal up to 7 days before opening.
  - f. All parties of record must be notified of amendments or postponements.
16. Exemptions may be made by UMTA.

CATALOG OF FEDERAL REGULATIONS

San Diego Trolley Implementation Evaluation

SUBJECT: Environmental Impact and Related Procedures

CITATIONS: 23 C.F.R. Part 771; 49 C.F.R. Part 622

EFFECTIVE DATE: October 30, 1980

ENABLING STATUTES: 42 U.S.C. 4321 et seq., National Environmental Policy Act; 23 U.S.C. 138, Department of Transportation Act; 49 U.S.C. 1653(f) Section 4(f), Department of Transportation Act

PRINCIPAL AGENCY: Urban Mass Transportation Agency; Federal Highway Administration

COORDINATING AGENCIES: Environmental Protection Agency; Areawide Clearinghouses; State Historical Preservation Agencies; Advisory Council on Historic Preservation; Department of Interior; Department of Agriculture; Department of Housing and Urban Development; Department of State; Council on Environmental Quality

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PURPOSE: Prescribes all FHWA, UMTA and DOT requirements under the National Environmental Protection Act for processing transportation projects.

RESPONSIBILITIES:

- Applicant:
1. Prepare and comment on all environmental documents.
  2. If qualified, (see requirements), manage document preparation.
  3. If qualified, implement mitigation measures.

Administration (UMTA/FHWA):

1. Determine role of Applicant.
2. Determine scope and content of document.
3. Manage preparation of environmental documents.
4. Assure implementation of committed mitigation measures.

Environmental Impact and Related Procedures (continued)

- PROCEDURES:
1. Early Coordination and Project Development:
    - a. Notification of Administration.
    - b. Local coordination and notification.
    - c. Designation of lead agency, cooperating agencies.
    - d. A-95 review.
    - e. Notification of Applicant of probable class of action.
  2. Complete Environmental Assessment to determine class of action.
  3. Administration determination of class of action.
  4. Preparation of environmental document (DEIR).
  5. Circulation of document (45 day minimum).
  6. Public Hearing (30 day advance notification).
  7. Prepare FEIR/\_\_\_\_\_ (ROD).
  8. Review and Approval of FEIR by Administration.
  9. Distribution of FEIR to EPA, other coordinating agencies.
  10. ROD completed and signed by Administration (at least 30 days after FEIR/90 days after DEIR).

OTHER REQUIREMENTS:

1. Types of Applicants:
  - a. (Joint) Lead Agency
    - (1) Statewide public
    - (2) Local agency acting through the State
    - (3) Public agency subject to requirement comparable to NEPA.
  - b. Cooperating Agency
    - (1) Local public agencies with special expertise
    - (2) Local applicant for UMTA Section 3 and 5 funds.
  - c. Private Institutions/Firms: Limited to provision and comment on environmental documents.
2. Class of Action:
  - a. Categorical exclusions (i.e., )
  - b. Environmental Assessment: Determine if there is significant impact: 30 day notification/30 day review
  - c. Finding of No Significant Impact (FONSI)
    - (1) Finding of EA
  - d. Draft/Final Environmental Impact Statement.

RELATED REGULATIONS (AND STATUTES):

See Attachment.

## ATTACHMENT

### ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

#### RELATED REGULATIONS/STATUTES

- . 40 C.F.R. 1500 et seq., CEQ Regulations
- . 49 C.F.R. 1.51, DOT Delegations of Authority to UMTA
- . 49 C.F.R. 1.48(b), DOT Delegations of Authority to FHWA
- . DOT Order 5610.1C, Procedures for Considering Environmental Impacts
- . 16 U.S.C. 461 et seq., Archaeological and Historic Preservation Act; and 23 U.S.C. 305
- . 16 U.S.C. 470f, Section 106 of the National Historical Preservation Act of 1966
- . 16 U.S.C. 662, Section 2 of the Fish and Wildlife Coordination Act
- . 16 U.S.C. 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972
- . 16 U.S.C. 1536, Section 7 of the Endangered Species Act of 1973
- . 33 U.S.C. 1251 et seq., Clean Water Act of 1977
- . 42 U.S.C. 300(f) et seq., Safe Drinking Water Act
- . 42 U.S.C. 4371 et seq., Environmental Quality Improvement Act of 1970
- . 42 U.S.C. 4601 et seq., Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- . 42 U.S.C. 4901 et seq., Noise Control Act of 1972
- . 42 U.S.C. 7401 et seq., Clean Air Act
- . 42 U.S.C. 200d-d4, Title VI of the Civil Rights Act of 1964
- . Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991, dated May 24, 1977
- . Executive Order 11593, Protection and Enhancement of the Cultural Environment dated May 13, 1971, implemented by DOT Order 5650.1, dated Nov. 20, 1982
- . Executive Order 11988, Floodplain Management, dated May 24, 1977, implemented by DOT Order 5650.2, dated April 23, 1979
- . Executive Order 11990, Protection of Wetlands, dated May 24, 1977, implemented by DOT Order 5660.1A, dated August 24, 1978
- . Sections 3(d), 5(h) and 5(i) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1601 et seq.)
- . Section 14 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1610)
- . UMTA Circular 5620.1, Guidelines for Preparing Environmental Assessments

CATALOG OF REGULATIONS

San Diego Trolley Implementation Evaluation

SUBJECT: Buy America

CITATION: 49 CFR 660

EFFECTIVE DATE: December 6, 1978

ENABLING STATUTE: Surface Transportation Assistance Act of 1978

PRINCIPAL AGENCY: UMTA

COORDINATING AGENCIES: All federally-assisted procurements

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PURPOSE: To define terms and procedures guiding the application of Section 401 "Buy America", of the Surface Transportation Assistance Act of 1978, P.L. 95-599. These regulations apply to all federally-assisted procurements under grants, loans, and cooperative agreements made pursuant to the Urban Mass Transportation Act of 1964 for equipment and construction of facilities in which a third party contract exceeds \$500,000.

RESPONSIBILITIES:

- Grantee:
1. Adheres to the Buy America requirements.
  2. Include Buy America provisions in contract bids and approvals.
  3. Assure third party contracts include Buy America certificate.
  4. Request waivers.
  5. Initiate an investigation into bidder's certification.

- UMTA:
1. Prescribe implementation of Buy America requirements.
  2. Review and comment on third party contracts.
  3. Issue waivers.
  4. Enforce the provision of the Act.

PROCEDURES:

1. Prepare and submit application for federally-assisted procurement grants, loans, or cooperative agreements.
2. UMTA reviews and obligates funds.
3. Grantee issues bid specifications for procurement of equipment and construction of facilities.
4. Grantee determines preference for domestic or foreign procurement.
5. Grantee may request waiver. Written request should include facts and justification to support granting of waiver.
6. Partial or entire waivers may be issued.
7. Waivers granted for entire grant or overall project may proceed without any requirements.
8. Partial waivers require computation of the domestic components required (see
9. Contract is awarded.
10. It is presumed that the contractor's certificate complies with the Buy America provision.
11. Procedural guidelines used by UMTA to enforce the provision of the Act include:
  - a. Presumption that a bidder is complying with the Buy America provision.
  - b. Any party may petition UMTA to investigate compliance of a successful bidder.
  - c. If UMTA determines evidence indicates non-compliance, Grantee is required to initiate an investigation.
  - d. Grantee shall require the successful bidder to document its compliance.
  - e. Bidder has the burden of proof.
  - f. If the bidder fails to comply, it will be required to substitute sufficient domestic materials, articles, and supplies to meet terms of original certification without revision of original contract terms.
  - g. Failure to comply will be a breach of contract and subject to law.
  - h. Willful refusal to comply may lead to the initiation of debarment proceedings.
  - i. The sole right of the third party is to petition UMTA.

OTHER REQUIREMENTS:

1. Only an article, material or supply, whether manufactured or unmanufactured, produced and mined in the USA may be procured with UMTA financial assistance unless the Administrator waives the application.
2. Buy America requirements do not apply to the procurement of service.
3. The nationality of supplies or their employees does not affect the origin of the end products or components to be procured.
4. Determination of Domestic Components:
  - a. The cost of domestic components must exceed 50 percent of the cost of all its components;
  - b. The final assembly of components to form the end product must take place in the USA.
  - c. In determining the origin of components, each component must be treated as either entirely domestic or entirely foreign, based on the place where the component is mined, produced, or manufactured.
  - d. Components of unknown origin must be treated as foreign.
  - e. The origin of subcomponents of components is immaterial.
5. Waivers will be granted if:
  - a. Their application would be inconsistent with public interest;
  - b. In the case of acquisition of rolling stock, their application would result in unreasonable costs;
  - c. Supplies of the class or kind to be used in the manufacture of articles, materials, supplies are not mined, produced, or manufactured in the USA in sufficient and available quantities and of a satisfactory quality;
  - d. Inclusion of domestic material will increase the cost of the overall project contract by more than ten per centum.
6. Additional UMTA considerations:
  - a. The cost, "red tape", and delay that would be imposed if the provision were not waived;
  - b. Only taxes paid by the bidder;
  - c. Whether a domestic end product will be presumed unavailable if no responsive and responsible domestic bid has been received;

Buy America (continued)

- d. Whether the lowest responsive and responsible bid offering foreign end products when multiplied by 1.1 is less than domestic bids.
7. End products and components of end products may be granted different waivers.

RELATED REGULATIONS:

- 29 CFR 5.6
- 23 USC 103 or 142
- 41 CFR 12-6.105
- 41 CFR 101a-d
- 18 USC 1001





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