



**REQUEST FOR PROPOSAL (“RFP”)-EXHIBIT M-1
SINGLE LEVEL FLEET REPLACEMENT PROGRAM
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
1 Massachusetts Ave NW, Washington DC 20001**

**EXHIBIT M-1
BUY AMERICA REQUIREMENTS**

**SINGLE LEVEL FLEET REPLACEMENT EQUIPMENT
DOMESTIC PREFERENCE REQUIREMENTS/AMTRAK BUY
AMERICAN ACT**

As noted in the instructions to offerors, this request for proposal (RFP) and the resulting Supplies contracts will be subject to Amtrak’s domestic preference requirements found at 49 U.S.C. § 24305(f) (the “Amtrak Buy American Act”), the domestic preference requirements of the Build America, Buy America Act (BABA) § 70914, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by OMB, USDOT, and FRA and 2 C.F.R. §200.32. The technical support supplies agreement (TSSSA) will be subject to these Amtrak Buy American Act, as well. The applicable Buy American provision is also set forth in the Supplementary General Provisions for Nonconstruction Contracts.

I. Amtrak Buy American Act Requirements

A. The Amtrak Buy American requirements of this RFP are comprised of two parts:

Part I – Domestic Preference/Buy American Certification and Waiver Processes: Offeror must complete the Domestic Preference/Buy American Act Certification forms to indicate that the proposed Equipment will undergo final assembly in the U.S. and that more than fifty-five percent (55%) of the cost of all components will be manufactured in the U.S. or indicate that a waiver(s) will be required and sufficient documentation to process the waiver(s) is submitted with that Certificate indicating non-compliance. (See Domestic Preference/Buy American Act Certifications).

Part II – Buy American Pre-Award, Ongoing, and Post-Delivery Audits: The Buy American process for this procurement and the resulting contracts will include both pre-award and post-delivery audits. Amtrak, the FRA, and/or its representative(s) will also provide ongoing oversight of the awardee’s Buy American compliance during the Equipment’s design and manufacture.

B. Certification Requirements

Each Offeror shall submit the Buy America Certifications with its Supplies Technical Proposal. Supplies Technical Proposals not accompanied by properly completed Buy America Certifications may be rejected as nonresponsive.

The Offeror is bound by the certifications submitted with its Proposal and is not permitted to change its certifications after submission of the Proposal. In no event may Offeror change its certification, after contract award.

Where the Offeror certifies in its Proposal that it will comply with the Buy American requirements and later determines that it cannot, the Offeror shall not be eligible for a waiver of those requirements, unless FRA determines that circumstances completely beyond the Offeror’s control exist making compliance impossible (e.g., where the intended supplier for a particular component goes out of business and no other supplier exists). No price adjustments will be allowed under these circumstances.



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Offeror certifications and requests to correct certifications are subject to FRA/Amtrak audit, and the Offeror/Contractor and its suppliers agree that by submitting a proposal to supply a component or by submitting a Proposal to supply the Equipment to provide all required information to support any such audit(s) the following Buy America documentation must be included as part of the Supplies Technical Proposal submission:

1. Completed and signed Buy American Certificates;
2. Completed and signed Buy American Component Supplier Certification Forms (Exhibit M-3), one for each domestic component supplier whose component will be calculated to demonstrate that more than fifty-five (55) percent of the cost of all components is domestic; and
3. Any Buy American Waiver Requests and justifications (see below for detailed requirements regarding application for waivers).

II. Amtrak Buy American Act -- Overview

The Amtrak Buy American Act requires Amtrak to purchase only those items that are “manufactured in the United States substantially from domestic components.

The statute does not define what it means to be “substantially” domestic, however, Amtrak and the FRA have interpreted this to mean that more than fifty-five (55) percent of the cost of all components must be domestic and the end product must be manufactured in the United States.

Amtrak has additional Buy America requirements for the steel and iron used to manufacture the following types of primarily steel and iron manufactured goods or end products:

- Railcar systems and components, including items such as steel car shells, wheels, couplers, trucks, axles, piping, battery boxes, enclosures, mounting racks, and grab irons.
- Structural construction materials, including items such as steel or iron beams and columns, and bridge trusses.
- Steel track work used in track projects, including items such as running rail, contact rail, switch rails, and turnouts.

The additional requirements for steel and iron are that all steel and iron manufacturing processes must have taken place in the United States, except any metallurgical processes involving refinement of steel additives. In other words, Amtrak requires all manufacturing process from the *initial melting stage* through the application of coatings take place in the United States. The initial melting stage in the production of steel occurs when iron feedstock (e.g., iron ore, pig iron, reduced iron) or scrap steel is melted to produce steel. Depending on the production process used, the initial melting stage commonly may occur in a blast furnace, a basic oxygen furnace, or an electric arc furnace. The iron feedstock, scrap steel, or other inputs at this stage may be non-domestic. Products from steel that was melted and cast outside the U.S., and only reheated to below its melting point or cold worked in the United States, do not meet this standard.

(Note: if an Offeror has achieved the 55% requirement of the Amtrak Buy American Act, it is acceptable for Offeror to utilize steel from nondomestic sources on components that are confirmed as foreign and not included in the calculation of the 55%.)

Amtrak encourages maximizing domestic materials wherever possible.

A. (1) Definitions. As used herein--



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Component means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location. Amtrak has included at Representative List of Trainset Components at Exhibit M-4 to the RFP. The items on the list are presumed to be components, but in determining whether an item is a component, the definition here shall prevail.

Cost of components means--

- (a) For components purchased by Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Domestic end product means--

- (a) An unmanufactured end product mined or produced in the United States; or
- (b) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components.

End product means any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at the final assembly location, that is acquired for public use under a federally-funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s).

Foreign end product means an end product other than a domestic end product.

Subcomponent means any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component in the manufacturing process and that is incorporated directly into a component.

United States means the fifty (50) States, the District of Columbia, and outlying areas.

B. The Amtrak Buy American requirement has two elements as follows:

- (1) Final assembly of the Equipment must occur in the United States (no waivers will be granted to this requirement), and
- (2) More than fifty-five (55) percent of the cost of the components of each rail car or vehicle must be domestic (manufactured in the U.S.). (see Exhibit M-4, Representative List of Trainset Components for Purposes of Amtrak 49 USC 24305(f) .



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In the case of the manufacture of a new rail car, final assembly would typically include, *as a minimum*, the following operations: installation and interconnection of propulsion control equipment, propulsion cooling equipment, brake equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, motors, wheels and axles, suspensions and frames; the inspection and verification of all installation and interconnection work; and the in-plant testing of the stationary product to verify all functions.

A **Proposal** will be deemed compliant with the Amtrak Buy American Act requirements in this RFP under the following circumstances:

The Proposal indicates final assembly of the Equipment will occur in the U.S. and **EITHER**:

- (1) More than fifty-five (55) percent of the cost of the Components will be domestic (manufactured in the U.S.) and the Offeror submits a Certificate indicating compliance (Exhibit M-2) and a form documenting the U.S. location of each components’ manufacture; **OR**
- (2) More than fifty-five (55) percent of the cost of the Trainset Components cannot be manufactured in the U.S. and the Offeror submits a Buy American Act Certificate indicating non-compliance (Exhibit M-2) and a form, documenting the components that will be manufactured in the U.S. and for components that cannot be manufactured in the U.S. submits documentation sufficient to process and support a waiver from the Amtrak Buy American Act requirements (see 49 U.S.C. § 24305 (f)).

All certifications are subject to audits.

C. Non-Compliance Certification and Waiver Process

As set forth above, final assembly of the Equipment must occur in the U.S. No waiver of this requirement will be granted and a Proposal containing such a request for waiver will be rejected as nonresponsive.

A waiver from the Amtrak Buy American Act regarding the requirement that more than fifty-five (55) percent of the cost of the Trainset components must be of U.S. origin may be granted if the FRA determines one of the following to be true:

- (1) Applying the requirement would be inconsistent with the public interest;
- (2) The required component(s) are not produced in the U.S. in a sufficient and reasonably available amount or are not of a satisfactory quality;
- (3) Including the required component(s) would cause the rolling stock or power train equipment to not be bought and delivered in the U.S. within a reasonable time; and/or
- (4) imposing the requirements will unreasonably increase the cost of the Trainset or other end products.

(See 49 U.S.C. § 24305(f)(4)).

D. Waiver Process

Offeror shall submit, as part of its Supplies Technical Proposal, any waiver request(s) together with its Buy America(n) Act Certificate indicating non-compliance.



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At minimum and where applicable, the Offeror’s waiver request shall include the following information for each component:

- (1) Identification and description of the Equipment proposed under this project;
- (2) Identification of the Component(s), including the cost, country of origin, and the name of the supplier or sub-supplier, not meeting the applicable Amtrak Buy American Act requirement;
- (3) Description of the process used to find U.S. suppliers of component(s) for which a waiver is being requested;
- (4) Description of a process demonstrating a commitment to finding and/or developing U.S. suppliers in future procurements;
- (5) Cost differential(s) to secure domestic component(s) as compared with nondomestic component(s);
- (6) Issues with quality or quantity of compliant component(s);
- (7) Issues with timely delivery of compliant component(s);
- (8) Citation to the specific 49 U.S.C. § 24305(f)(4) waiver category(ies) under which the waiver is sought;
- (9) Justification supporting the application of the waiver category(ies) cited to the extent not already answered by the above; and
- (10) Any other information that offeror can provide that might influence the waiver decision such as:
 - a. Whether offeror can source the initial quantity of the component non-domestically and then the remainder in the U.S.;
 - b. Whether manufacturing in the U.S. can occur over time. Please provide details on when and where;
 - c. The number of jobs offeror would add in the U.S.; and
 - d. Whether this would create a second domestic supplier moving forward.

The Offeror must provide clear justification for each separate component for which a waiver is being requested. Offeror should also provide a statement detailing the percentage of domestic content by cost and quantity of components.

The FRA will review the waiver documentation provided by Amtrak. The FRA in consultation with Amtrak will identify any deficiencies with the waiver request(s). Waiver documentation review by the FRA does not guarantee the waiver request will be granted; instead its purpose is only to determine that sufficient information has or has not been submitted and to make a determination. If request deficiencies are identified, the deficiencies may be discussed with the Offerors during one on one interviews, which shall be held only in the event they are determined by Amtrak to be needed.

Contract award can be made only to Offerors that have certified Buy American compliance (either by certification that the Offeror can meet assembly and the applicable component percentage (more than 55 percent of the cost of all components) requirements or by certification that the Offeror can meet assembly requirements but not the applicable component percentage requirements and the Offeror has submitted a complete waiver request(s)). Contract award will not occur before the FRA has reached a final decision on any waivers. Offeror certifications, waiver request(s) and justifications are subject to FRA/Amtrak audit, and the Offeror/Contractor and its suppliers agree that by submitting a proposal to supply a component or by submitting the Proposal to supply the Equipment to provide all required information to support any such audit(s).

III. Buy America(n) Pre-Award, Ongoing, and Post-Delivery Audits



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The Buy America(n) process for this procurement will include pre-award and post-delivery audits. In addition, throughout design and manufacture of the Equipment, Amtrak or their representative(s) will provide ongoing oversight of selected Offeror’s Buy American compliance.

The presumptive awardee/Contractor must agree (and get agreement from its suppliers and/or proposed suppliers) to provide to Amtrak or its representatives all relevant documents, including Buy American certifications, waiver requests and justifications, bills of lading or other shipping documents, and any other documents verifying the final assembly location and origin of manufacture for included components. The presumptive awardee/Contractor must also agree (and get agreement from its suppliers and/or proposed suppliers) to give access to manufacturing plants and assembly locations to allow Amtrak or their representatives to complete audits. Information obtained during all audits will be kept confidential to the extent allowed by Federal and State laws.

Pre-award Audit: The pre-award audit will be conducted before Amtrak enters into a formal contract with the presumptive awardee. The pre-award audit may include, at Amtrak’s discretion, an inspection of the facility where final assembly is to occur, an inspection of documentation provided by the presumptive awardee detailing the assembly activities that will occur at this facility, procurement documentation, and an inspection of all Buy America(n) Certification Forms and Supplemental Documents provided by suppliers for all included components and site visits to selected component manufacturing plants to verify the assertions made in those certifications. All Buy American Certification Forms submitted by component suppliers shall be signed and dated by the responsible official having knowledge of the origin of manufacture for the particular component(s). Unsigned forms will be rejected. The pre-award audit will take place during the evaluation process or some other time frame as indicated by Amtrak, but prior to Contract Award.

Post-delivery Audit: The post-delivery audit of the first serial production of the Equipment will be completed by Amtrak and/or their representatives before the final acceptance by Amtrak. Amtrak will not accept Equipment if the post-delivery audit cannot be completed to verify the Contractor’s compliance with the Buy American requirements.