

5. The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals. These are the statutory criteria upon which funding decisions will be made. In addition to these criteria, FTA may also consider other factors, such as the size of the applicant's fleet and the level of FTA funding that may already have been awarded to applicants in prior years.

#### H. Grant Requirements

Applicants selected for funding must include documentation necessary to meet the requirements of FTA's Nonurbanized Area Formula program (Section 5311 under Title 49, United States Code). Technical assistance regarding these requirements is available from each FTA regional office. The regional offices will contact those applicants selected for funding regarding procedures for making the required certifications and assurances to FTA before grants are made.

Those applicants selected for funding will be required to comply with all of the Federal requirements applicable to the OTRB Accessibility Program, provided in the comprehensive compilation below. Federal requirements apply to the incremental cost of adding wheelchair accessibility features to new vehicles or when retrofitting existing vehicles, not to the entire vehicle. All applicants are advised to read the entire list of requirements to be confident of their responsibilities and commitments for compliance.

The authority for these requirements are provided by the Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, as amended by the TEA-21 Restoration Act 105-206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, DOT and FTA regulations at 49 CFR, and FTA Circulars.

#### 1. Buy America

In the OTRB Accessibility program, FTA's Buy America regulations, 49 CFR Part 661, apply to the incremental capital cost of making vehicles accessible. Those regulations do not apply to associated labor costs. The following discussion relates to the contract between the grantee and the prime contractor.

The "General Requirements" found at 49 CFR 661.5 apply to that portion of the accessibility system being funded. That section requires that all of the manufacturing processes for the product

take place in the United States and that all components of the product be made in the United States. A component is considered domestic if it is manufactured in the U.S.A., regardless of the origin of its subcomponents. The lift, the moveable seats, and the securement devices will all be considered components for purposes of this program; accordingly, as components, each must be manufactured in the United States. Should a recipient choose to request funding for only a specific component, such as the lift or the securement device, then the Buy America requirements would apply only to that item funded by FTA.

Three exceptions to the general requirements can be found at 49 CFR 661.7: first, a waiver may be requested when the application of the regulation is not in the public interest; second, a waiver may be requested if the materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; and third, a price differential waiver may be requested where the results of competitive procurement show that there is a 25 percent price difference between the domestic and foreign products. FTA approval of a waiver must be received by the recipient of FTA funds prior to the execution of contract.

It should also be noted that FTA has issued a general public interest waiver for all purchases under the Federal "small purchase" threshold, which is currently \$100,000. This waiver can be found in 49 CFR 661.7, Appendix A(e). In Section 3038(b) of TEA-21, Congress authorized FTA financing of the incremental capital costs of compliance with DOT's OTRB accessibility rule. Consistent with this provision, the small purchase waiver applies only to the incremental cost of the accessibility features FTA is funding. Where more than one bus is purchased, the grantee must consider the incremental cost increase for the entire procurement when determining if the small purchase waiver applies. For example, if \$30,000 is the incremental cost for the accessibility features eligible under this program per bus (regardless of the Federal share contribution), then a procurement of three buses with a total such cost of \$90,000, would qualify for the small purchase waiver. No special application to FTA would be required.

The grantee must obtain a certification from the bus manufacturer that all items included in the incremental cost for which the applicant

is applying for funds meet Buy America requirements.

The Buy America regulations can be found at <http://www.fta.dot.gov/library/legal/buyamer/>.

#### 2. Labor Protection

Before FTA may award a grant for capital assistance, 49 U.S.C. 5333(b) requires that fair and equitable arrangements must be made to protect the interests of transit employees affected by FTA assistance. Those arrangements must be certified by the Secretary of Labor as meeting the requirements of the statute. When a labor organization represents a group of affected employees in the service area of an FTA project, the employee protective arrangement is usually the product of negotiations or discussions with the union. The grant applicant can facilitate Department of Labor (DOL) certification by identifying in the application any previously certified protective arrangements that have been applied to similar projects undertaken by the grant applicant, if any. Receiving funds under the OTRB Accessibility program, however, will not require the grantee's employees to be represented by organized labor. Nothing in the labor protection provisions in 49 U.S.C. 5333(b) requires a motorcoach operator to become a union carrier or encourages union organizing in any manner. Upon receipt of a grant application requiring employee protective arrangements, FTA will transmit the application to DOL and request certification of the employee protective arrangements. In accordance with DOL guidelines, DOL notifies the relevant unions in the area of the project that a grant for assistance is pending and affords the grant applicant and union the opportunity to agree to an arrangement establishing the terms and conditions of the employee protections. If necessary, DOL furnishes technical and mediation assistance to the parties during their negotiations. The Secretary of Labor may determine the protections to be certified if the parties do not reach an agreement after good faith bargaining and mediation efforts have been exhausted. DOL will also set the protective conditions when affected employees in the service area are not represented by a union. When DOL determines that employee protective arrangements comply with labor protection requirements, DOL will provide a certification to FTA. The grant agreement between FTA and the grant applicant incorporates by reference the employee protective arrangements certified by DOL.

Applicants must identify any labor organizations that may represent their