



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Intent to Grant Buy America Waiver to Amtrak to Use Three Non-Domestic Component Parts in No. 32.75 136RE Special Turnouts Manufactured in the U.S. by voestalpine Nortrak, Inc.

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public that it intends to grant the National Railroad Passenger Corporation (“Amtrak”) a waiver to purchase four (4) No. 32.75 136RE Special Turnouts (“Turnouts”) manufactured by voestalpine Nortrak, Inc. (“Nortrak”) for use in the New York City to Trenton, NY, High-Speed Rail Improvements Program (the “High-Speed Rail Improvements Program” or “Program”). The Turnouts will be manufactured by Nortrak in the United States at its facility in Birmingham, Alabama, but will contain two components (ZU1-60 steel switch point rail sections and Schwihag roller assemblies and plates) that are not produced in the U.S. The cost of the Turnouts is approximately \$2 million. The foreign material comprises approximately thirteen percent of the Turnouts’ cost or approximately \$260,000. FRA intends to grant the waiver because domestically-produced components meeting the specific needs of Amtrak for this application (i.e., specialized high-speed turnouts) are not produced in sufficient and reasonably available amount or are not of a satisfactory quality.

DATES: Written comments on FRA's determination to grant Amtrak's Buy America waiver request should be provided to FRA on or before April 22, 2013.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA-2012-0033. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>.

Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) Fax: (202) 493-2251;

(3) Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, Room W12-140, Washington, DC, 20590-0001; or

(4) Hand Delivery: Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the "Federal Railroad Administration" and include docket number FRA-2012-0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to

<http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Ms. Linda Martin, Senior Attorney-Advisor, FRA Office of Chief Counsel, (202) 493-6062 or via e-mail at Linda.Martin@dot.gov.

SUPPLEMENTARY INFORMATION:

FRA is issuing this notice to advise the public that it intends to grant Amtrak's request for a waiver from FRA's Buy America requirement, 49 U.S.C. 24405(a). The letter granting Amtrak's request provides as follows:

Mr. Jeff Martin

Chief Logistics Officer

National Railroad Passenger Corporation

30th Street Station

Box 12, 5th Floor, SE Tower

Philadelphia, Pennsylvania 19104

Re: Request for Waiver of Buy America Requirement

Dear Mr. Martin:

This letter is in response to your August 8, 2012 request that the National Railroad Passenger Corporation ("Amtrak") be granted a waiver from the Federal Railroad Administration's ("FRA") Buy America provision, at 49 U.S.C. § 24405(a)(1) to purchase four (4) No. 32.75 136RE Special Turnouts ("Turnouts") manufactured by voestalpine Nortrak, Inc. ("Nortrak") for use in the New York City to Trenton, NY, High-

Speed Rail Improvements Program (“NY-NJ HSR Program”). For the reasons set forth below, FRA is granting Amtrak’s request.

The NY-NJ HSR Program, funded through a \$449,944,000 American Recovery and Reinvestment Act grant from FRA, will upgrade and improve the catenary, power, track and signal systems on the Northeast Corridor primarily between New Brunswick, New Jersey and Trenton, New Jersey. It will also improve the western approach tracks in New York Penn Station to facilitate increased speeds and improved reliability for all users and eventual higher levels of service. As you know, the Turnouts will be used as part of track and structures upgrades that will progress between New Brunswick, NJ and Trenton, NJ. Specifically, the Turnouts will be included in the design of new high speed interlockings known as “Delco” and “Adams” to support high speed train operations by adding high speed diverging moves not currently possible. The new interlockings will allow New Jersey Transit (“NJT”) zone express trains to diverge from the high speed tracks to the local tracks. The new interlockings will allow an 80 mph (possibly higher) movement for NJT trains and other Regional Amtrak services operating simultaneously. The cost of the Turnouts is approximately \$2 million. The foreign material comprises approximately thirteen percent of the Turnouts’ cost or approximately \$260,000. The Turnouts will be manufactured by Nortrak at its plant in Birmingham, Alabama, but will contain several components (ZU1-60 steel left and right switch point rail sections and Schvihag roller assemblies and plates) that are not produced in the U.S.

Section 24405(a)(1) authorizes the Secretary of Transportation (“Secretary”) to obligate grant funds only if the steel, iron, and manufactured goods used in the project are produced in the United States. FRA believes a waiver is appropriate under 49 U.S.C. §

24405(a)(2)(B) for the ZUI-60 steel switch point rail sections and Schwihag roller assemblies and plates because domestically-produced components meeting the specific needs of Amtrak for this application (i.e., specialized high-speed turnouts) are not currently “produced in sufficient and reasonably available amount or are not of a satisfactory quality.” Amtrak also requested a waiver for the Turnout’s vee point. However, FRA determined that a waiver is not necessary with regard to the vee point. FRA considers manufactured goods produced in the U.S. if they are manufactured in the U.S. from components that are manufactured in the U.S. No restrictions are placed upon the subcomponents of the manufactured goods. See <http://www.fra.dot.gov/Page/P0391> (FAQ no. 6). Because the vee point is a subcomponent of one of the Turnout’s components (the moveable point frog), a waiver from the Buy America requirement is not necessary.

In order to determine whether to grant Amtrak’s request, FRA provided notice and an opportunity for comment on its public website. FRA received six comments to the website notice. All commenters encouraged finding domestic sources for the components. Two commenters stated that the cost information should be considered when evaluating the waiver request. No commenter identified a supplier for the components. FRA also used the services of the National Institute for Standards and Technology Manufacturing Extension Partnership (MEP) in order to scout for domestic sources for the components. The MEP supplier scouting revealed that the ZUI-60 steel sections from which the switch point rails are machined (by Nortrak) appeared to be currently available from a domestic manufacturing source. However, follow up discussions between MEP, Amtrak, and that potential source revealed that though it was

determined that the source could roll the necessary steel it was not currently doing so.

Moreover, the source reported that it would take, at best, six months to one year to produce the rail sections and questioned whether the quantity needed for these types of rails (four left and four right rails for this project) would justify the business expense of doing so.

MEP also found that roller assemblies and plates potentially meeting the specific requirements of the Turnouts were available from domestic manufacturers. However, follow up discussions with these companies revealed that though several companies made similar items, the current ability to produce the items to the specification required by Amtrak did not exist without retool and retest in the No. 32.75 136RE Special Turnout needed for this project.

Importantly, FRA is currently funding a grant to Nortrak for the research and development of a high speed rail turnout design that is based on U.S. specifications. The goal of the research is to yield a "Buy America" compliant high speed turnout. The grant runs through June 2013 and is expected to yield as a deliverable a drawing package suitable for bid. The next phase of the project (if funded) would be construction and test of the turnout at FRA's Transportation Testing Center in Pueblo, Colorado. Despite this research, the potential for a compliant turnout that may be available in the future and the timing of this waiver, the current availability of compliant components is at issue.

As you know, Amtrak is currently in the early stages of procurement of the Turnouts, which require approximately 300 days for delivery. Once delivered, Amtrak must assemble the Turnouts at one of its Maintenance of Way facilities, which takes approximately one to two months. Then, once assembled, Amtrak must deliver the

Turnouts by train to the locations where they will be installed. The tracks at Adams and Delco are scheduled to go out of service in February 2014 in order for the Turnouts to be installed. This outage has been planned with and agreed to by NJT. Accordingly, in order to have enough time to assemble the Turnouts prior to their installation in February 2014, the Turnouts must be delivered to Amtrak no later than early January 2014. This means that Amtrak must be able to place its order for the Turnouts not later than the end of March 2013. For this reason, even if a U.S. specification could be designed and steel switch point rail sections rolled and roller assemblies and plates meeting the needs of these specific turnouts fabricated and retested, it would happen too late to meet the tight project deadline for the long lead time Turnouts needed for this project.

Pursuant to 49 U.S.C. § 24405(a)(4), FRA will publish this letter granting Amtrak's request in the *Federal Register* and provide notice of such finding and an opportunity for public comment after which this waiver will become effective. This waiver applies only to the ZUI-60 steel switch point rail sections and Schvihag roller assemblies and plates as manufactured into the four No. 32.75 Turnouts installed on the NY-NJ HSR Program. As you are aware, discussions between MEP, Amtrak, Nortrak, and other companies that have the potential to produce these items are ongoing and future requests for a waiver will not be granted without a specific showing that significant good faith efforts to obtain a domestic source for the items have been made. FRA staff will stay involved in these discussions and will assist in whatever way needed.

Question about this letter can be directed to, Linda Martin, Senior Attorney-Advisor, at Linda.Martin@dot.gov or (202) 493-6062.

Sincerely,

Joseph C. Szabo

Administrator

This *Federal Register* notice is issued in Washington, DC on April 16, 2013.

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Melissa Porter
Chief Counsel,
Federal Railroad Administration.

[FR Doc. 2013-09295 Filed 04/18/2013 at 8:45 am; Publication Date: 04/19/2013]