



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2013-0027]

Notice of Buy America Waiver for Minivans

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America Waiver.

SUMMARY: In response to North Front Range Metropolitan Planning Organization's (NFRMPO) request for a Buy America waiver for minivans based upon non-availability, the Federal Transit Administration hereby waives its Buy America final assembly requirement for NFRMPO's procurement of minivans for NFRMPO's vanpool ("VanGo") program. This waiver is limited to a single purchase not to exceed 25 seven-passenger vehicles to take place no later than December 31, 2014.

DATES: This Buy America waiver is limited to a single purchase not to exceed 25 seven-passenger vehicles and expires on December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Mary J. Lee, FTA Attorney-Advisor, at (202) 366-0985 or mary.j.lee@dot.gov.

SUPPLEMENTARY INFORMATION: On April 23, 2013, the North Front Range Metropolitan Planning Organization (NFRMPO) requested a Buy America waiver for the procurement of minivans. In its request, NFRMPO cited a lack of available, Buy America-compliant seven-passenger vehicles for its vanpool program located in northern Colorado and requested a Buy America waiver for its five-year procurement program. According to

NFRMPO, a recently issued RFP resulted in no suitable or acceptable bids that meet the Buy America rules. In a second letter dated May 17, 2013, NFRMPO reiterated its request for a Buy America waiver and noted that the Vehicle Production Group (VPG) had “shut down” production of its Mobility Vehicle 1 (MV-1), a Buy America compliant vehicle.

According to NFRMPO, its VanGo Vanpool Program includes 75 vans with routes connecting, among others, Fort Collins, Loveland, Greeley, Denver, and Boulder, Colorado; it carries more than 420 commuters daily at 93 percent occupancy. The vanpools in its VanGo Vanpool Program carry between five and eight passengers, which make the larger passenger vans inefficient and too costly and VPG’s MV-1 too small and costly.

With certain exceptions, FTA’s Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless “the steel, iron, and manufactured goods used in the project are produced in the United States.” 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product must take place in the United States; and (2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that “the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,” then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On August 5, 2013, the Federal Transit Administration (FTA) published a notice and sought comments on the North Front Range Metropolitan Planning Organization’s (NFRMPO) Buy America waiver request for minivans based upon non-availability. 78 FR 47487. FTA

received fourteen comments, including comments from the Mayor of the City of Loveland, the Colorado Department of Transportation, Chrysler Group LLC, Taxicab, Limousine & Paratransit Association, Association for Commuter Transportation, vRide, and a number of anonymous comments.¹ Some comments, including the letter from the City of Loveland's Mayor, referenced a similar Federal Highway Administration notice and appeared to be posted in error. Such comments were forwarded to the appropriate Federal agency.

All correctly posted comments expressed support of a waiver. The Colorado Department of Transportation, Division of Transit and Rail, stated that the VanGo Vanpool Program provides a "vital commuting service," is "an important component in the strategy to address regional air quality issues," including the Denver and North Front Range Air Quality Planning regions that are in non-attainment status for Ozone (O₂) and maintenance status for Carbon Monoxide (CO), and the use of minivans is critical to keeping the program "efficient, affordable and effective." Chrysler Group LLC also supports a waiver and cited, among other things, the industry's need for a vehicle with greater seating capacity than the MV-1, and the MV-1's production status, which has resulted in a lack of available Buy America compliant vehicles. Another commenter, the Taxicab, Limousine, & Paratransit Association, agreed with the need for a waiver because of the flexibility that a minivan offers, *e.g.*, greater seating capacity than an MV-1, the lack of the MV-1's performance history data, and the need for greater competition. Other commenters requested a broader and longer-lasting waiver that could be applied to other procurements or an expedited waiver process. Finally, a number of anonymous VanGo commuters posted comments in favor of a waiver.

¹ In error, FTA cited two docket numbers in its August 5, 2013 notice, FTA-2012-0029 and FTA-2013-0027. Therefore, FTA considered all comments posted to these two dockets that referenced this waiver request.

In response to the comments regarding NFRMPO's waiver request, many of the comments refer to issues that FTA addressed in its December 3, 2012 decision, including, among other things, differences between the MV-1 and traditional minivans, competition, and the need for a blanket waiver. FTA directs interested parties to this decision, 77 FR 71673, for additional information. In addition, FTA notes that AM General LLC recently purchased rights to the MV-1 and expects to resume production of the MV-1 in the near term.

However, FTA appreciates all of the comments and recognizes that there are certain limited circumstances when a waiver is warranted. In its December 3, 2012 decision to rescind the blanket Buy America waiver for minivans and minivan chassis on final assembly (77 FR 71673), FTA stated that, although it rescinded the blanket waiver, it would still review waiver requests for minivans and minivan chassis on a case-by-case basis. Subsequently, NFRMPO requested an individual waiver for its minivan procurement and FTA began reviewing the request according to its stated policy.

Therefore, after careful consideration, and based upon the fact that no manufacturer has identified itself as willing and able to supply the seven-passenger vehicles that NFRMPO requires for its VanGo Vanpool Program that comply with FTA's Buy America requirements, FTA hereby waives its Buy America final assembly requirement of 49 CFR 661.11 for NFRMPO's procurement. This non-availability waiver is limited to NFRMPO and valid for a single purchase not to exceed 25 seven-passenger vehicles for its VanGo Vanpool Program to take place no later than December 31, 2014.

Dated: November 21, 2013.

Dorval R. Carter, Jr.
Chief Counsel

[FR Doc. 2013-28467 Filed 11/26/2013 at 8:45 am; Publication Date: 11/27/2013]