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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2013-0035]

Notice of Buy America Waiver for a Video Ready Access Device Cabinet

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America Waiver.

SUMMARY: In response to the City of Charlotte's request for a Buy America waiver for a Video Ready Access Device (VRAD) cabinet, the Federal Transit Administration (FTA) hereby waives its Buy America requirements for the VRAD cabinet needed for an AT&T utility relocation associated with the Charlotte Area Transit System's (CATS) LYNX Blue Line Extension project. This waiver is limited to a single procurement for the VRAD cabinet for the LYNX Blue Line Extension project.

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

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that the Federal Transit Administration (FTA) has granted a non-availability waiver for the procurement of a Video Ready Access Device (VRAD) cabinet that will be used in a utility relocation performed by AT&T. This utility relocation will be performed in connection with the Charlotte Area Transit System's (CATS or City of Charlotte) LYNX Blue Line Extension (BLE) project, which is an FTA-funded project.

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 take place in the United States; and (2) all of the components of the product are 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 May 24, 2013, the City of Charlotte requested an interpretation of FTA's Buy America rules with respect to the utility relocation performed for the CATS LYNX BLE project. In an August 8, 2013 letter to the City of Charlotte, FTA determined that the VRAD cabinet is a component of the communications network end product. Having performed its own analysis prior to FTA's August 8, 2013 determination, on June 4, 2013, the City of Charlotte requested a non-availability waiver for the VRAD cabinet. According to the City of Charlotte, AT&T has been working diligently to find U.S. manufactured components and has been able to identify U.S. manufacturers of most of the components necessary for the utility relocation. The only remaining component for which AT&T is unable to find a U.S. manufacturer is the VRAD cabinet.\1\

\1\Initially, the City of Charlotte requested Buy America waivers for the VRAD cabinet and the Cross Connect cabinet. Since then, however, AT&T has been able to identify a U.S. manufacturer of the Cross Connect cabinet.

In subsequent telephone conversations and in-person meetings between AT&T, FTA, and the Federal Highway Administration, FTA learned that the VRAD cabinet, which is manufactured by Alcatel-Lucent, can be manufactured in either Mexico or Washington State. Under its current contract with Alcatel-Lucent, however, AT&T is unable to select the manufacturing facility where the VRAD cabinet is manufactured.

On August 27, 2013, FTA published a notice to request comments on the City of Charlotte's waiver request for the VRAD cabinet. The comment period closed on September 26, 2013. FTA did not receive any comments to the docket, docket number FTA-2013-0035.

Based upon AT&T's assertions that it is unable to procure a U.S.-manufactured VRAD cabinet at this time and that it expects to require U.S. manufacture of the VRAD cabinet in subsequent contracts that fall within the scope of FTA-funded projects, FTA hereby waives its Buy America requirement for manufactured products under 49 CFR 661.5(d) for the VRAD cabinet. This waiver is limited to a single procurement for the VRAD cabinet for the CATS LYNX Blue Line Extension project.

Issued on December 5, 2013.

Dorval R. Carter, Jr.,
Chief Counsel.

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