



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2014-0025]

Notice of Proposed Buy America Waiver for Track Turnout Components

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The Federal Transit Administration (FTA) is providing notice of a request from the New York Metropolitan Transportation Authority's Long Island Rail Road (LIRR) to waive Buy America requirements for the purchase of components of high-speed track turnouts that do not meet FTA's Buy America requirements. The LIRR submitted the request in connection with three projects: (1) LIRR's 2015 State of Good Repair Program; (2) the East Side Access Project; and (3) LIRR's Jamaica Capacity Improvement Project. Pursuant to 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the waiver request and is seeking public comment before deciding whether to grant the request. If granted, the waiver would apply only to the FTA-funded procurements in LIRR's 2015 State of Good Repair Program, the East Side Access Project, and LIRR's Jamaica Capacity Improvement Project, and only to the procurement of components – the turnouts will be manufactured in the United States.

This proposed Buy America waiver does not include the turnout components for the Northeast Corridor Congestion Relief Project at Harold Interlocking, which is being addressed in a separate waiver request published by the Federal Railroad Administration (FRA), as FRA funds are being used for that project.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION].
FTA will consider late-filed comments to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA-2014-0025:

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, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the “Federal Transit Administration” and include docket number FTA-2014-0025. Due to the security procedures in effect since October 2011, 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 April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Richard L. Wong, FTA Attorney-Advisor, at (202) 366-4011 or Richard.Wong@dot.gov.

SUPPLEMENTARY INFORMATION: FTA seeks comment on whether it should grant a non-availability waiver for LIRR's procurements of turnouts needed for LIRR's 2015 State of Good Repair Program, the East Side Access Project, and LIRR's Jamaica Capacity Improvement Project, which are utilizing FTA funding.

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 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. 49 CFR 661.5(d). A component is of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d)(2). If 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 non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

LIRR is requesting a non-availability waiver for its procurement of turnouts needed for LIRR's 2015 State of Good Repair Program, the East Side Access Project, and LIRR's Jamaica Capacity Improvement Project. The turnouts consist of multiple components, including Schwihag roller assemblies, Schwihag plates, ZU1-60 steel switch point rail sections, and movable point frogs, which LIRR asserts are not available and are not manufactured in the United States. The turnouts themselves, however, will be manufactured in the United States.

LIRR states that these turnouts are essential throughout its system for the following operational reasons: (1) the turnouts withstand the frequent and heavy use by passenger and freight trains traveling along LIRR's right of way; (2) the turnouts accommodate an increased

amount of rush hour trains and allow them to travel at higher speeds, ultimately providing more throughput during LIRR's busiest hours; (3) the foreign-made components reduce impact loading to the turnouts; and (4) the turnouts provide for less wear and tear, thereby requiring less maintenance, extending the useful lives of the turnouts, and requiring less outages and negative impacts on LIRR's operations.

In support of its requests, LIRR points to a non-availability waiver that FRA issued to the National Railroad Passenger Corporation (also referred to as "Amtrak") for the same turnout components on April 23, 2013. FRA's waiver was based on a December 2012 Supplier Scouting Report (Report) developed by the Manufacturing Extension Partnership of the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). NIST's Report identified several potential U.S. manufacturers of the turnout components, but after extensive outreach, FRA determined that no domestic manufacturers were willing and capable of producing the components. To support the waiver requests that are the subject of this notice, LIRR utilized the NIST Report and conducted individualized outreach with each of the manufacturers identified in it. LIRR also conducted its own independent outreach. Based on these efforts, LIRR has determined that there are no U.S. manufacturers that are willing and capable of producing the turnout components that are needed for its system.

Since that initial waiver, FRA published a second notice on September 19, 2014, requesting comments on a subsequent request for turnout components from LIRR for the Harold Interlocking Project that would not meet FRA's Buy America requirements. See, <http://www.fra.dot.gov/Page/P0719>. FRA's comment period closed on October 6, 2014, and interested parties can view FRA's determination via the Buy America web link in the preceding sentence.

The purpose of this Notice is to inform potential interested vendors of LIRR's requests and to seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. Full copies of LIRR's requests will be posted in docket number FTA-2014-0025, along with any public comments.

Dana Nifosi
Acting Chief Counsel

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