



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2014-0025]

Notice of Buy America Waiver for Track Turnout Components

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America Waiver.

SUMMARY: In response to a request from the Long Island Rail Road Company (LIRR), a subsidiary of the New York Metropolitan Transportation Authority (MTA), for a Buy America waiver for track turnout components, the Federal Transit Administration (FTA) hereby waives its Buy America requirements for LIRR's procurement of the following track turnout components: Schwihag roller assemblies, Schwihag plates, ZU1-60 steel switch point rail sections, and movable point frogs. This waiver is limited to LIRR's procurement of these track turnout components for the nine (9) turnouts that LIRR needs for VHL03 LIRR Stage 3 of the East Side Access Project and the one (1) turnout that LIRR needs for VHL04 LIRR Stage 4 of the East Side Access Project. The turnouts themselves, however, are subject to FTA's Buy America requirements and, accordingly, the turnouts must be manufactured in the United States.

This Buy America waiver does not apply to the track turnout components for Phase I of LIRR's Jamaica Capacity Improvements Project, and FTA will address that waiver request separately. Moreover, this Buy America waiver does not apply to the track turnout components for the Northeast Corridor Congestion Relief Project at Harold Interlocking, which is being

addressed in a separate waiver decision published by the Federal Railroad Administration (FRA), as FRA funds are being used for that project.

DATES: This waiver is effective immediately.

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

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA is granting a non-availability waiver for LIRR's procurement of track turnout components—i.e., Schwihag roller assemblies, Schwihag plates, ZU1-60 steel switch point rail sections, and movable point frogs (MPFs)—that are needed for VHL03 LIRR Stage 3 and VHL04 LIRR Stage 4 of the East Side Access (ESA) 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 must take place in the United States; and (2) All of the components of the product must be of U.S. origin. 49 CFR 661.5(d). 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)(2). 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 July 31, 2014, LIRR requested a non-availability Buy America waiver for the procurement of four specific track turnout components—i.e., Schwihag roller assemblies,

Schwihag plates, ZU1-60 steel switch point rail sections, and MPFs—that are needed for the ESA Project. MTA entered into an FTA Full Funding Grant Agreement in 2006 to build the ESA Project. As described by LIRR, the ESA Project will extend LIRR commuter rail service from Queens to the east side of Midtown Manhattan and will construct a new LIRR Terminal at Grand Central Terminal.

On February 4, 2015, LIRR submitted a letter to FTA indicating that it has become aware of alternate turnout designs that may be compatible with LIRR’s infrastructure, with some modifications, for the ESA Project and that may be available from a domestic source in the future. Accordingly, in its February 4, 2015 letter, LIRR narrowed its waiver request to apply only to VHL03 LIRR Stage 3 and VHL04 LIRR Stage 4 of the ESA Project. Specifically, LIRR explained that it critically needs the Buy America waiver for nine (9) turnouts that are necessary for VHL03 LIRR Stage 3 of the ESA Project in order for LIRR to meet its 2016 installation schedule and to thereby avoid delays to the overall ESA project schedule. Additionally, LIRR specified that it needs the track turnout components waiver so that it may procure one (1) unique turnout—No. 32.75—for VHL04 LIRR Stage 4 of the ESA Project.

LIRR has stated that the foreign-sourced MPFs are essential components of track turnouts for the following operational reasons: (1) turnouts with MPFs are necessary to withstand the frequent and heavy use by passenger and freight trains traveling along LIRR’s right of way; (2) turnouts with MPFs allow trains to travel through the turnouts at higher speeds, ultimately providing more throughput during rush hour; (3) turnouts with MPFs reduce impact loading to the turnouts; and (4) turnouts with MPFs provide for less wear and tear, thereby requiring less overall maintenance, extending the useful lives of the turnouts, and resulting in fewer outages and negative impacts on LIRR’s operations.

Based on previous solicitations, market research, and manufacturer outreach, as set forth below, LIRR concluded that it was unable to identify a domestic source for track turnout components—i.e., Schwihag roller assemblies, Schwihag plates, ZU1-60 steel switch point rail sections, and MPFs—that LIRR needs for VHL03 LIRR Stage 3 and VHL04 LIRR Stage 4 of the ESA Project.

In February 2014, LIRR issued a competitive solicitation seeking vendors to provide five (5) turnouts for VHL03 LIRR Stage 3 of the ESA Project. LIRR received only one response, and it was from VAE Nortrak North America Inc. (Nortrak), which certified that it was not compliant with the Buy America requirements. Based on LIRR's prior experience in procuring the same or similar turnouts, LIRR has found that Nortrak and Progress Rail Services Corporation (Progress) are the only two vendors that are technically capable of manufacturing turnouts with the roller assemblies, plates, ZU1-60 steel switch point rail sections, and MPFs that LIRR requires for the ESA Project. According to LIRR, Nortrak and Progress manufacture the turnouts domestically, but the turnout components that are the subject of this waiver are presently manufactured only non-domestically.¹ Progress did not submit a bid in response to the February 2014 solicitation related to VHL03 LIRR Stage 3 of the ESA Project.

Furthermore, in support of its requests, LIRR also conducted market research and manufacturer outreach. In conducting this research, LIRR utilized the National Railroad Passenger Corporation's (Amtrak) previous market research regarding potential domestic manufacturers of the four component types that are the subject of this notice. Amtrak conducted its market research at the request of FRA, and the research included outreach to manufacturers

¹ The roller assemblies and plates are manufactured in Switzerland; the ZU1-60 steel switch point rail sections are manufactured in Austria; and the MPFs are manufactured in Germany.

that were previously identified by the U.S. Department of Commerce's National Institute of Standards and Technology (NIST) in a December 2012 Supplier Scouting Report.

Additionally, LIRR conducted its own independent outreach and contacted seven potential manufacturers: Unitrac Railroad Materials, Inc., Arcelor Mittal, J. Manufacturing Inc., Steel Dynamics, Inc., Metal Tech, Compucision, LLC, and IAT International Inc.² Three of the seven potential manufacturers failed to respond to repeated requests for information. Four manufacturers responded, but LIRR concluded that the four manufacturers were not potential domestic sources for the components because the manufacturers each stated that either it did not currently manufacture the components or it did not appear economically feasible for the manufacturer to manufacture the components in the quantities needed by LIRR. One of the four responsive manufacturers, Compucision, LLC, expressed interested, but it had never manufactured the components previously and had little knowledge of the technical requirements. Based on these efforts, LIRR determined that there are no U.S. manufacturers that are willing and capable of producing the turnout components that are presently required for VHL03 LIRR Stage 3 and VHL04 LIRR Stage 4 the ESA Project.

On December 19, 2014, FTA published a **Federal Register** notice requesting comment on LIRR's waiver request, pursuant to 49 CFR 661.7. 79 FR 75857 (Dec. 19, 2014). No comments were received to the docket.

Based upon LIRR's good faith efforts to identify potential domestic manufacturers for these track turnout components, LIRR's informed conclusion that there are presently no U.S. manufacturers that are willing and capable of producing the turnout components needed for VHL03 LIRR Stage 3 and VHL04 LIRR Stage 4 of the ESA Project, and the lack of responses to

² FTA defers to LIRR's spelling and punctuation of the manufacturers' names as presented in LIRR's July 31, 2014, letter.

FTA's Federal Register Notice, FTA is issuing a non-availability waiver, pursuant to 49 CFR 661.7(c), for LIRR's procurement of the track turnout components—i.e., Schwihag roller assemblies, Schwihag plates, ZU1-60 steel switch point rail sections, and MPFs—but in connection with only the nine (9) turnouts needed for VHL03 LIRR Stage 3 and the one (1) turnout needed for VHL04 LIRR Stage 4 of the East Side Access Project, as set forth above. Subsequent waiver requests for track turnout components will be subject to notice-and-comment publication requirements. This waiver does not apply to the turnouts themselves, and, accordingly, the turnouts must be manufactured in the United States pursuant to FTA's Buy America requirements. *See* 49 CFR part 661.

Furthermore, this Buy America waiver does not apply to the track turnout components for Phase I of LIRR's Jamaica Capacity Improvements Project, which will be addressed in a separate waiver decision by FTA. With respect to LIRR's Buy America waiver request from March 26, 2013 (and supplemented on September 19, 2014) for track turnout components of one (1) #20 tangential geometry turnout for LIRR's State of Good Repair (SGR) Program, LIRR withdrew that waiver request on February 9, 2015 due to a potential domestically produced alternative turnout for its SGR program.

Furthermore, this Buy America waiver does not apply to the track turnout components for the Northeast Corridor Congestion Relief Project at Harold Interlocking, which is being addressed in a separate waiver decision published by FRA, as FRA funds are being used for that project.

Issued in Washington DC by

Dana Nifosi,
Acting Chief Counsel.

[FR Doc. 2015-03242 Filed 02/17/2015 at 8:45 am; Publication Date: 02/18/2015]