



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2012-0033]

Notice of Intent to Grant a Buy America Waiver to the Long Island Rail Road for the Purchase of Seven U.S.-Made Turnouts Containing Four Non-Domestic Components

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 Long Island Rail Road (LIRR), a subsidiary of the Metropolitan Transportation Authority, a waiver from FRA's Buy America requirement under 49 U.S.C.

24405(a)(2)(B) for the purchase of seven (7) turnouts manufactured by VAE Nortrak North America, Inc. at its plant in Birmingham, Alabama, for use in the LIRR North East Corridor Congestion Relief Project at Harold Interlocking. The turnouts will contain four components (ZUI-60 steel left and right switch point rail sections and Schvihag roller assemblies and plates) not produced in the U.S. The roller assemblies and plates are manufactured in Switzerland, and the ZUI-60 steel switch point rail sections are manufactured in Austria. The foreign material comprises approximately 11.9 percent of the turnouts' \$3.1 million cost or approximately \$367,000. 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 roller assemblies and plates because domestically-produced components meeting the specific needs of LIRR are not currently

“produced in sufficient and reasonably available amount or are not of a satisfactory quality.”

DATES: Written comments on FRA’s determination to grant LIRR’s Buy America waiver request should be provided to the FRA on or before [INSERT DATE 5 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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: Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590, (202) 493-0078, John.Johnson@dot.gov.

SUPPLEMENTARY INFORMATION:

The letter granting LIRR's request is quoted below:

Mr. Carl Cipriano
Manager-Procurement East Side Access
Long Island Rail Road
90-27 Sutphin Boulevard
3 Floor, MC 0335
Jamaica, NY 11435

Re: Request for Waiver of Buy America Requirement

Dear Mr. Cipriano:

As you are aware, on August 21, 2014, the Long Island Rail Road (LIRR) requested a waiver from FRA's Buy America requirement to purchase twenty-two (22) turnouts (Turnouts) manufactured by VAE Nortrak North America, Inc. (Nortrak) for use in the LIRR North East Corridor (NEC) Congestion Relief Project at Harold Interlocking (Harold Interlocking Project).

In February 2015, LIRR withdrew its request for the full twenty-two (22) Turnouts and amended its request to only seven (7) Turnouts. Those 7 Turnouts will be manufactured by Nortrak at its plant in Birmingham, Alabama, but will contain four components (ZU1-60 steel left and right switch point rail sections and Schwihag roller assemblies and plates) that are not produced in the U.S. Instead, the roller assemblies and plates are manufactured in Switzerland and the ZU1-60 steel switch point rail sections are manufactured in Austria. The foreign

material comprises approximately 11.9 percent of the Turnouts' \$3.1 million cost or approximately \$367,000.

LIRR amended its request because it determined that an alternative turnout design that Union Pacific railroad is using could potentially provide LIRR with a 100-percent FRA Buy America compliant turnout for future use at Harold Interlocking. However, LIRR asserts that an alternative design will require significant work before LIRR can integrate it into LIRR's infrastructure, including use for Harold Interlocking. This work includes development of a new configuration; preparation of shop drawings; and preparation, review and approval of the new design. The new specification then must be provided to potential manufacturers who will need to perform additional engineering and fabrication so that the newly designed turnout can be adapted for use for the Harold Interlocking Project. FRA agrees with LIRR's assertions. For the reasons set forth below, FRA is granting a waiver for the purchase of seven (7) Turnouts.

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 roller assemblies and plates because domestically-produced components meeting the specific needs of LIRR for this application are not currently "produced in sufficient and reasonably available amount or are not of a satisfactory quality." Both FRA and LIRR have conducted significant outreach to find 100-percent compliant turnouts. LIRR issued two competitive solicitations for the Turnouts and received no Buy America compliant bids. LIRR also conducted extensive market research utilizing a previous scouting report relating to turnout components from a previous FRA waiver for the same components. In conducting that research, LIRR contacted seven potential manufacturers. None produced the needed turnout components as designed.

On September 19, 2014, FRA provided public notice of this waiver request and a 15-day opportunity for comment on its website. FRA also emailed notice to over 6,000 persons who have signed up for Buy America notices through "GovDelivery." See <http://www.fra.dot.gov/Page/P0719>. FRA received no comments.

Moreover, although a future design capable of using domestic components may be possible, FRA concludes that the seven (7) turnouts are not reasonably available because the time required to design, test, and competitively procure those turnouts would likely cause at least a one year delay in completing the overall project, preventing the Harold Interlocking Project from being completed by September 30, 2017 (the deadline for the expenditure of Federal funds

awarded under the American Recovery and Reinvestment Act of 2009). Thus, FRA grants LIRR's request for the initial seven (7) Turnouts.

This waiver applies only to the ZUI-60 steel switch point rail sections and Schwihag roller assemblies and plates as manufactured into the initial seven (7) Turnouts installed in the Harold Interlocking Project. We will not grant any future requests for waivers without a specific showing that a significant good faith effort to obtain domestic sources for these components has taken place but failed.

Pursuant to 49 U.S.C. § 24405(a)(4), FRA will publish this letter granting LIRR'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.

Questions about this letter can be directed to, John Johnson, Attorney-Advisor, at John.Johnson@dot.gov or (202) 493-0078.

Sincerely,

Sarah Feinberg,
Acting Administrator.

Melissa L. Porter,
Chief Counsel.

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[FR Doc. 2015-12332 Filed: 5/20/2015 08:45 am; Publication Date: 5/21/2015]