



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Docket No. FRA-2012-0033

Notice of Intent to Grant a Buy America Waiver to the City of Sacramento, California, Department of Public Works, for the Purchase of a Variable Refrigerant Flow Heating, Ventilation, and Air Conditioning System

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 City of Sacramento, California, Department of Public Works (Sacramento), a waiver from FRA's Buy America requirement under 49 U.S.C. 24405(a)(2)(B) for the purchase of a variable refrigerant flow (VRF) heating, ventilation, and air conditioning system for use in the Sacramento Valley Station Phase II intermodal project. The \$30 million project is partially funded with a \$15 million 2012 Transportation Infrastructure Generating Economic Recovery grant. The cost of the non-domestic material in the VRF system is approximately \$202,500. FRA believes a waiver is appropriate under 49 U.S.C. 24405(a)(2)(B) for the VRF system because VRF systems are not currently produced in the U.S.

DATES: Written comments on FRA's determination to grant Sacramento'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 Sacramento's request is quoted below:

Mr. Gregory Taylor
AIA, Supervising Architect / Project Manager
City of Sacramento, Department of Public Works
915 I Street
Room 2000
Sacramento, CA 95814-2604

Re: Request for Waiver of Buy America Requirement

Dear Mr. Taylor:

As you are aware, on November 24, 2014, the City of Sacramento, California, Department of Public Works (Sacramento) requested a waiver from the Federal Railroad Administration's (FRA) Buy America requirement (49 U.S.C. § 24405(a)) to purchase a variable refrigerant flow (VRF) heating, ventilation, and air conditioning (HVAC) system for use in the Sacramento Valley Station (SVS) Phase II intermodal project.¹

The SVS Phase II intermodal project is the rehabilitation of the historic 68,000 square foot train station in downtown Sacramento, California. The \$30 million project is partially funded with a \$15 million 2012 Transportation Infrastructure Generating Economic Recovery (TIGER) grant. The U.S. Department of Transportation (DOT) selected each project for 2012 TIGER Grant funding based on whether it would, among other things, promote a more environmentally sustainable transportation system. 77 FR 4863, 4867 (January 31, 2012). After rehabilitation, the SVS will include Amtrak station facilities, commercial retail and office space.

FRA is granting Sacramento's waiver request. FRA concludes a waiver is appropriate under 49 U.S.C. § 24405(a)(2)(B) for the VRF system because

¹ Sacramento also requested a waiver for Marmoleum flooring. However, FRA has chosen to bifurcate the waiver requests since the VRF waiver is more advanced in terms of processing and in urgent need by Sacramento. FRA is still deciding whether a waiver for the flooring is warranted.

domestically-produced HVAC systems meeting the specific needs of Sacramento for this application (i.e., energy efficiency and historic preservation) are not currently “produced in sufficient and reasonably available amount or are not of a satisfactory quality.” 49 U.S.C. § 24405(a)(2)(B).

With respect to historic building preservation and energy efficiency, FRA concludes that the VRF system is the only choice for the rehabilitation of the SVS for the following reasons:

- The VRF system has small distribution pipes instead of larger ductwork that would create problematic penetrations in the existing older structures.
- The VRF system has smaller equipment in the conditioned allowable space.
- The VRF system does not require heavy, large air handling units that would overburden an historic building’s capacity.
- The VRF system has zone-to-zone heat recovery and high efficiency heating and cooling.

In addition to concluding that VRF is the only system meeting the project’s needs, FRA also conducted due diligence with regard to determining the availability of domestic manufacturers of the VRF system. FRA concludes that no company manufactures VRF systems domestically. FRA bases this determination on the following facts:

- In 2010, the U.S. Department of Energy (DOE) issued a blanket non-availability waiver for VRF HVAC systems procured with American Reinvestment and Recovery Act funding. See 75 FR 35447, June 22, 2010.
- In 2014, the Federal Transit Administration (FTA) granted two non-availability waivers for VRF systems. See St. Louis’ MetroLink, 79 FR 34653, June 17, 2014, and San Bernardino Associated Governments, 79 FR 61129, October 9, 2014. FTA is currently reviewing another non-availability waiver for a VRF system.
- On December 9, 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 one comment. The commenter supported granting the waiver and stated, “The efficiency of the VRF system cannot be matched by other types of conventional systems.”
- In February 2015, FTA engaged National Institute of Standards and Technology’s Hollings Manufacturing Extension Partnership (NIST-MEP) to scout for Buy America-compliant VRF systems.

NIST-MEP did not locate any domestic VRF systems. In fact, Carrier Corporation responded to NIST-MEP's scouting efforts, stating "VRF system is a new technology...there are no current domestic manufacturers of VRF systems."

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

Question 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.

[FR Doc. 2015-14887 Filed: 6/16/2015 08:45 am; Publication Date: 6/17/2015]