



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2016-0006]

Notice of Buy America Waiver for Steel Excavator with a Continuous Weld Platform

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to the request of Metro North Railroad (MNR) for a Buy America non-availability waiver for the procurement of a steel excavator with a continuous weld platform (CWP), the Federal Transit Administration (FTA) hereby waives its Buy America requirements, finding that the materials for which the waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality. This waiver is limited to a single procurement by MNR for the CWP.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366-2743 or laura.ames@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for MNR for the procurement of a steel excavator with a CWP, under 49 U.S.C. 5323(j)(2)(B) and 49 CFR 661.7(c).

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). Under 49 U.S.C. 5323(j)(2)(C), rolling stock must contain more than 60 percent

domestic content and final assembly must occur in the U.S. The CWP is subject to the rolling stock requirements. 49 CFR 661.3.

MNR operates commuter rail service spanning 787 track miles. MNR has a large length of track along the shore line and flooding along the line can occur regularly at many of these locations. The risk of flooding can be reduced by keeping drainage infrastructure clear of debris. Specialized equipment such as the CWP can quickly clear the right of way after storms enabling the resumption of passenger train service. After Hurricane Sandy, MNR leased a CWP, but given limited availability, as well as the higher cost of leasing, MNR believes that purchase of the CWP is necessary to ensure that it will be available to expedite service restoration and was provided funding to purchase such equipment from FTA through the emergency relief funds allocated for Superstorm Sandy.

A CWP is a support vehicle train which consists of several platforms suitable for holding/hauling and picking up or distributing a variety of materials, such as rocks, riprap, dirt or debris. The equipment is similar to an excavator which has an articulated arm, with the main difference being that it rides on rails and sits on a connected platform where it can dump or pick up material from in order to perform its functions. The main tasks for which the MNR uses the CWP is shoreline stabilization/restoration and for removing debris from the right-of-way after storms.

MNR prepared and advertised a solicitation for the CWP on January 9, 2015. On February 5, 2015, BRRI, a Canadian firm, submitted a Certificate of Non-Compliance because the final assembly of the equipment would take place in Canada, although content of the material used would be 77% domestic origin.

MNR did extensive follow-up after receiving only one bid, including contacting seven vendors who did not submit bids and undertaking research to determine whether a CWP that met both the domestic content and the final assembly requirements of Buy America was available. One company that did not submit a bid stated that although it could meet the Buy America requirements, it was not interested in bidding on the project at this time. Accordingly, MNR requested a non-availability waiver of the Buy America requirements for final assembly pursuant to 49 U.S.C. 5323 (j)(2)(B).

On March 22, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing the MNR Buy America waiver request (81 FR 15407), seeking comment from all interested parties, including potential vendors and suppliers. The comment period closed on March 29, 2016, and no comments were received. Based on the representations from MNR and the lack of any comments, FTA is granting a non-availability waiver for final assembly only of the CWP. This waiver is limited to the final assembly requirement for a single procurement of the CWP described above by MNR.

Issued on April 14, 2016.

Dana Nifosi,
Deputy Chief Counsel.

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