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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Docket No. FTA-2016-0038

Notice of Proposed Buy America Waiver for Radio Consoles.

AGENCY: Federal Transit Administration, DOT.

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

SUMMARY: The Federal Transit Administration (FTA) received a request from the Greater Dayton Regional Transit Authority (GDRTA) for a Buy America non-availability waiver for the procurement of radio consoles, which are a part of a voice and cellular data communications system (the “radio consoles”). GDRTA’s current voice and data communications equipment is obsolete and malfunctioning. The new communication system will result in improved operational efficiency. GDRTA seeks a waiver for the procurement of radio consoles because there are no manufacturers that produce radio consoles that are compatible with GDRTA’s communications system and comply with the Buy America requirements. 49 U.S.C. § 5323(j)(2)(B) and 49 CFR § 661.7(c). GDRTA is joining Montgomery County’s radio system, and the radio consoles compatible with the new system must be original equipment manufacturer (OEM) Motorola devices. Motorola cannot provide Buy America-compliant radio consoles. In accordance with 49 U.S.C. § 5323(j)(3)(A), FTA is providing notice of the non-availability waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would apply to the radio consoles identified in the waiver request.

DATES: Comments must be received by [INSERT DATE 14 DAYS AFTER PUBLICATION].

Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA-2016-0038:

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-2016-0038. 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: Cecelia Comito, FTA Assistant Chief Counsel, at (202) 366-2217 or Cecelia.comito@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek public comment on whether the FTA should grant a Buy America non-availability waiver

for the Greater Dayton Regional Transportation Authority (GDRTA) to procure radio consoles, which would be a part of GDRTA's new communication system (the "radio consoles"). On May 24, 2016, GPMTD requested a Buy America waiver for the radio consoles because they are not produced in the United States in sufficiently and reasonably available quantities or of a satisfactory quality. 49 U.S.C. § 5323(j)(2)(B); 49 CFR § 661.7(c).

GDRTA is a public transit agency that serves Montgomery and Western Green counties in Ohio. GDRTA provides more than 9 million passenger trips per year on 31 routes throughout the region. In January 2014, GDRTA conducted a technology scope development project to determine how technology enhancements could improve its operational efficiency; this included a voice and data communication alternatives analysis. GDRTA comprehensively examined various technologies available for its voice and data communication needs. GDRTA compared and evaluated the differences between radio and cellular-based communication, including a cost analysis, reliability assessment, and long-range maintenance and operational differences. On August 5, 2014, the GDRTA Board approved the adoption of a mixed communication system for the agency, which would employ both voice and cellular data systems. GDRTA would join Montgomery County's 800MHz analog trunked system, instead of continuing to own a 450 MHz radio system.

Montgomery County's analog system uses proprietary Motorola SmartNetTrunking, and all equipment must be original equipment manufacturer (OEM) Motorola devices. All equipment must also be programmed to use the County's 800MHz analog system and have the ability to work on the MARCS 800 MHz digital system without any additional hardware. In November 2014, GDRTA purchased Motorola mobile and portable radios for its supervisors and its diesel, trolley, paratransit, maintenance, and support vehicles. The procurement and

installation of the radio consoles is the final step to move GDRTA's communication system to Montgomery County's system.

Motorola manufactures equipment both domestically and overseas. While the voice processing module portion of the radio consoles are currently manufactured in Illinois, the other components are manufactured in Mexico. Thus, GDRTA is seeking a Buy America non-availability waiver under 49 CFR § 661.7(c)(1) for the radio consoles.

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 take place in the United States; and (2) all of the components of the product are of U.S. origin. 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). 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).

Finally, under 49 U.S.C. 5323(j)(6), FTA cannot deny an application for a waiver based on non-availability unless FTA can certify that (i) the steel, iron, or manufactured good (the "item") is produced in the United States in a sufficient and reasonably available amount; and (ii) the item produced in the United States is of a satisfactory quality. Additionally, FTA must provide a list of known manufacturers in the United States from which the item can be obtained.

FTA is not aware of any manufacturers who produce the required radio consoles in the United States.

The purpose of this notice is to publish GDRTA's request and 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. After consideration of the comments, FTA will publish a second notice in the Federal Register with a response to comments and noting any changes made to the proposed waiver as a result of the comments received.

Ellen Partridge
Chief Counsel

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