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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2016-0036]

Notice of Proposed Buy America Waiver for Replacement Parts on Diesel Multiple Unit Rail Vehicles

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 North County Transit District (NCTD) in California for a Buy America non-availability waiver for the procurement of specified replacement parts for Diesel Multiple Unit (DMU) rail vehicles. The 12 DMU rail vehicles were manufactured by Siemens as a part of their Desiro series and were placed in revenue service in 2008. Mid-life maintenance and replacement overhauls of vehicle parts are now required in order to ensure safe and continuous transit service. In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the waiver request and seeks public comment before deciding whether to grant the request.

DATES: Comments must be received by [INSERT DATE, 7 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-2016-0036:

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-2016-0036. 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, 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 comment on whether the FTA should grant a non-availability waiver for NCTD’s purchase of replacement parts on their Siemens-manufactured Desiro series DMU rail vehicles, including, but not limited to, Power Pack Assembly, Power Truck Assembly, Jakobs Truck Assembly, Transmission, Primary Suspension, Secondary Suspension, Power Wheelset Assembly, Power Truck Brake Rotors, Jakobs Truck Brake Rotors, Power Truck Wheels, Jakobs Truck Wheels, A/C Compressors, and Carbody Brake Components, Automatic Train Couplers, and HVAC Roof

Mounted Units (the “Replacement Parts”). The Replacement Parts are necessary for mid-life maintenance of the DMU rail vehicles.

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).

NCTD provides transit service to the entire North San Diego County, serving more than 12 million riders annually. In 2003, NCTD requested and received from FTA a non-availability Buy America waiver for the procurement of 12 DMU vehicles for use on NCTD’s Sprinter line, with 15 light rail stations between the cities of Escondido and Oceanside. NCTD purchased the 12 DMU vehicles in 2004 and placed the vehicles into revenue service in 2008 on NCTD’s Sprinter line. The useful life of the vehicles is 25 years.

According to NCTD, the Replacements Parts for the DMU vehicles are nearing the end of their useful service lives and showing signs of wear and fatigue. Without periodic capital equipment replacement and/or rebuild, the likelihood of mechanical downtime increases significantly, equating to prolonged service outages for riders. In March 2013, NCTD removed

the Sprinter service from revenue service for more than two months due to premature wear of one of the three braking systems and unavailability of domestic replacement parts. NCTD intends to replace the components over several phases during the coming years, from 2018 through 2026. The last phase is anticipated to be procured over a subsequent seven-year period. Any non-availability waiver granted would be effective for all phases of these projects and will expire upon completion of these projects.

As a part of its search for domestic Replacement Parts, NCTD issued a Request for Information (RFI) on November 12, 2013 to maintenance and engineering communities to determine if any firms existed that could either supply Buy America compliant parts and components, or reverse engineer the parts and components utilizing plans and specifications provided. More than 300 vendors received the RFI; 19 downloaded the RFI. One vendor responded that “with proper specifications, drawings, and samples, we may be able to design and supply Buy America Compliant, OE equivalent, air bellows, primary suspension, and passenger bellows.” However, the original equipment manufacturer (“OEM”) would not provide the requested proprietary information. NCTD undertook three additional procurements for the Replacement Parts. Three responses were received; none could certify to Buy America compliance. Under 49 CFR 661.7(c)(1), “It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States.”

NCTD’s 12 vehicles are the only Siemens Sprinter vehicles in the United States. Additionally, since these vehicles were specifically designed to meet California Public Utilities Commission rail safety requirements, Sprinter is the only vehicle of its kind internationally.

NCTD's multiple procurement efforts have demonstrated that there are no suppliers willing to invest in infrastructure to manufacture parts that are suitable only for NCTD's 12 vehicles.

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 Replacement Parts in the United States.

The 12 DMUs purchased by NCTD were granted a waiver from Buy America. NCTD's efforts to identify domestic manufacturers for the various Replacement Parts were unsuccessful. FTA proposes to grant NCTD a non-availability waiver of the Buy America requirements for the Replacement Parts for the 12 DMUs which will be acquired for the replacement of the components over several phases from 2018 through 2026. Any non-availability waiver granted would be effective for all phases of these projects and will include Replacement Parts acquired to maintain the DMUs for their 25-year useful life.

The purpose of this notice is to publish NCTD'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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