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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2016-0037]

Notice of Buy America Waiver for Ultrastraight Rail

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: The Federal Transit Administration (FTA) received a request from the Central Puget Sound Transit Authority (Sound Transit) for a Buy America non-availability waiver for the procurement of ultrastraight rail. Sound Transit seeks to procure approximately 15,100 feet ultrastraight rail for a portion of its Northgate Link light rail extension to avoid exceedance of contractually-mandated vibration thresholds. The 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 Sound Transit.

DATES: The waiver is effective immediately.

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 announce that FTA has granted a Buy America non-availability waiver for Sound Transit for the procurement of approximately 15,100 feet of ultrastraight rail pursuant to 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). 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 non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). "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." 49 CFR 661.7(c)(1).

Sound Transit's Northgate Link extension is a \$1.9 billion rail project that consists of 4.3 miles and 3 new stations, and runs through residential and employment areas, including the University of Washington. Approximately 15,100 feet of that extension will run under the University of Washington's Health Sciences and Physics-Astronomy buildings, which house precision-measurement laboratories and experiments conducted by Nobel Prize winning faculty. The project's potential impact on the University's buildings was considered as part of the environmental review process required by the National Environmental Policy Act (NEPA). In 2006, FTA issued a final Record of Decision (ROD) for the project, and required implementation of mitigation measures, including a measure that would minimize vibration under the University buildings. Sound Transit then executed a 2007 agreement with the University of Washington in

which Sound Transit agreed to not exceed specified vibration thresholds, which could be met through use of ultrastraight rail, with parameters for that ultrastraight rail based on American Railway Engineers Maintenance-of-Way Association (“AREMA”) standards.

Sound Transit contacted domestic rail manufacturers regarding their ability to produce ultrastraight rail within the agreed upon AREMA specifications for the rail. Two leading manufacturers, Steel Dynamics, Inc. (SDI) and EVRAZ North America (EVRAZ), stated unequivocally that they are unable to fabricate rail that meets the specification. Sound Transit subsequently explored using domestically-sourced, milled rail. However, testing of the as-installed milled rail found that the rail failed to meet the applicable vibration thresholds. Due to its unsuccessful efforts to procure domestically-sourced ultrastraight rail within the vibration thresholds, Sound Transit seeks a non-availability waiver of the Buy America requirements for domestically-sourced steel. FTA published a notice in the Federal Register announcing the Buy America waiver request (Docket No. FTA–2016–0037) and sought comments from all interested parties, including potential vendors and suppliers. The comment period closed on November 8, 2016, and no comments were received.

Therefore, based on the information supplied in support of Sound Transit’s request for a Buy America waiver and the lack of any comments, FTA hereby waives its Buy America requirements for the procurement of ultrastraight rail on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement by Sound Transit for the procurement of approximately 15,100 feet of ultrastraight rail.

Ellen Partridge
Chief Counsel

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