



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 North Carolina Department of Transportation to Use Certain Non-Domestic Components of a Fire Alarm 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 it intends to grant the North Carolina Department of Transportation (NCDOT) a waiver from FRA's Buy America requirement to use certain non-domestic components of a fire alarm system that Lake Electric, Inc. will provide for the Locomotive and Railcar Maintenance Facility project in Charlotte, NC. Lake Electric, Inc. is an electrical contractor for the Locomotive and Railcar Maintenance Facility project.

**DATES:** Written comments on FRA's determination to grant a Buy America waiver to NCDOT should be provided to the FRA on or before **[INSERT DATE 7 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 reference 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 submitting responses 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, Washington, DC 20590, (202) 493-0078, [John.Johnson@dot.gov](mailto:John.Johnson@dot.gov).

**SUPPLEMENTARY INFORMATION:** FRA provided information on its reasons for granting this waiver in a letter to NCDOT, quoted below:

NCDOT Rail Division

1553 Mail Service Center

1 South Wilmington Street

Raleigh, NC 27699-1553

Re: Request for Waiver of Buy America Requirement

Dear Mr. Allan Paul:

On April 4, 2017, Lake Electric, Inc. requested a waiver from the Federal Railroad Administration's (FRA) Buy America requirement (49 U.S.C. § 24405(a)) to use certain components of a fire alarm system, which cannot be sourced in the United States, in the Locomotive and Railcar Maintenance Facility project in Charlotte, NC (Project). The Project is for the construction of a railcar and maintenance facility in Charlotte, North Carolina. The North Carolina Department of Transportation (NCDOT), through its contractor, awarded Lake Electric, Inc. the electrical construction sub-contract for the Project. The \$23.25 million project is funded by an American Recovery and Reinvestment Act of 2009 grant to NCDOT.

The Project is subject to 49 U.S.C. § 24405(a)(1). Section 24405(a)(1) requires the steel, iron, and manufactured goods used in a project to be produced in the United States. FRA may waive the Buy America requirements if FRA finds that: (1) applying the requirements would be

inconsistent with the public interest; (2) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amounts or are not of a satisfactory quality; (3) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (4) including domestic material will increase the cost of the overall project by more than 25 percent.

For the reasons stated in this letter, FRA grants a “non-availability” Buy America waiver. FRA is providing its decision on the waiver to NCDOT as the FRA grant recipient for this Project, and this waiver applies only to this Project.

Lake Electric seeks a waiver for the following components (Components) for use in the Project:

<b>Description</b>	<b>Quantity</b>	<b>Description</b>	<b>Quantity</b>
252 Point Fire Alarm Control Panel	1	Relay Modules	4
Digital Alarm Communicator Transmitter	1	Red Wall Mount Horn/Strobes	18
Remote Annunciators	1	Red Wall Mount Strobes	14
RS-485 Interface Modules	1	Multi-Criteria Fire Detectors	5
12V7ah SIA Batteries	4	Monitor Modules	5
Dual Action Manual pull stations	7	Dual Input Monitor Modules	1
Photoelectric Smoke Detectors	22		

The total cost of the fire alarm system is less than \$6,000, and the total cost of the non-U.S. manufactured components is less than \$4,000.

Lake Electric asserts the following facts in support of the waiver request:

Lake Electric sought bids from fourteen qualified suppliers and received two bids for the fire alarm system from suppliers Southern Sound and Lefler Electronics. Although these suppliers source many fire alarm system components from U.S. manufacturers, neither of the suppliers offered a one hundred percent Buy America-compliant system. All fire alarm system suppliers use a mix of foreign and US-made components; and

The foreign components used by suppliers vary. However, due to programming, interoperability, and certification issues, the components are not interchangeable among systems. Therefore, suppliers cannot swap out components to meet Buy America.

FRA independently verified these assertions with its Monitoring and Technical Assistance Contractor (MTAC), TranSystems. An electrical engineer from FRA's MTAC explained that large international suppliers source or manufacture pieces of the fire alarm system in different countries. Further, many portions of the system are addressable (individually programmable), which means the software and hardware must be compatible and tested. In addition, fire alarm components and systems are UL® listed. UL® is a third-party, independent company that certifies safety compliance of many systems and their components, including fire alarm systems. Attempting to swap pieces of a fire alarm system would jeopardize its UL® listing and could cause product warranty and liability issues.

FRA concludes a waiver is appropriate under 49 U.S.C. § 24405(a)(2)(B) for the Components because domestically-produced Components are not currently “produced in sufficient and reasonably available amounts.” 49 U.S.C. § 24405(a)(2)(B). FRA bases this determination on the following: For competitively bid, commercial products for buildings, such as fire alarm systems, FRA views receiving no Buy America-compliant bids as presumptive evidence the conditions exist to grant a non-availability waiver;

On September 28, 2017, 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 recipients that requested Buy America notices through “GovDelivery.” FRA received one comment. However, the commenter did not provide any information about a domestic source for a fully Buy America-compliant fire alarm system; and

FRA’s MTAC concurred with Lake Electric that due to programming, interoperability, and certification issues, components are not interchangeable among systems. Therefore, fire alarm system suppliers cannot swap out components to meet Buy America.

This waiver applies only to this Project for these specific components.

Under 49 U.S.C. § 24405(a)(4), FRA will publish this letter granting the Buy America waiver to the City in the Federal Register and provide notice of such finding and an opportunity for public comment after which this waiver will become effective.

Questions about this letter can be directed to, John Johnson, Attorney-Advisor, at John.Johnson@dot.gov or (202) 493-0078.

Sincerely,

Ronald L. Batory

Administrator

cc: Lake Electric Co.

**Brett Andrew Jortland,**

Acting Deputy Chief Counsel.

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