

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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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2016-0002]

#### Notice of Buy America Waiver for a Radio Communications System

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Buy America waiver.

**SUMMARY:** In response to the request of the Kansas City Area Transportation Authority (KCATA) for a Buy America waiver for a DMR Tier III Trunked UHF Voice radio system that is compatible with its current system, the Federal Transit Administration (FTA) hereby waives its Buy America requirements finding that the materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. This waiver is limited to a single procurement by KCATA for the DMR Tier III Trunked UHF Voice radio system.

**DATES:** This waiver is effective immediately.

**FOR FURTHER INFORMATION CONTACT:**

Laura Ames, FTA Attorney-Advisor, at (202) 366-2743 or [laura.ames@dot.gov](mailto: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 KCATA's procurement of a DMR Tier III Trunked UHF radio system 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). 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).

KCATA provides public transportation services in the Kansas

City, Missouri, metropolitan area, operating in seven counties. KCATA's current radio system was purchased in 2002 and fully activated in 2005. The radio system is analog and operates on two separate channels. It has limited growth capabilities, issues with "talk over," inaccessible voice connections, and escalating maintenance costs. KCATA is in the process of upgrading its radio system.

As part of its plan to upgrade the radio system, KCATA issued a Request for Proposals (RFP) on December 16, 2014, seeking a "turnkey project that includes a DMR Tier III Trunked UHF Voice radio system, full integration of the radio system with the Trapeze TransitMaster CAD/AVL system, and extended maintenance and support." KCATA only received one response to the RFP. Tait North America (Tait) expressed interest in the project but noted that it is headquartered in New Zealand and that a majority of the products supplied for the project would be assembled in New Zealand, making them non-compliant with Buy America.

Neither KCATA nor FTA has identified any companies in the United States that can meet the Buy America requirements for this project. FTA also conducted a scouting search for a U.S. manufacturer of a comparable radio system through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). The scouting search did not result in identifying any domestic manufacturers who could provide the equipment required by KCATA.

On Wednesday, March 22, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** (81 FR 15410) requesting public comment on, among other topics, the merits of KCATA's waiver request and potential effects of granting the waiver. The public comment period closed on March 29, 2016. FTA received only once comment.

Selex ES, a subsidiary of an Italian company with its North America headquarters in Overland Park, Kansas, commented that although it did not submit a proposal to KCATA's RFP, it can supply a DMR Tier III Trunked Radio Systems similar to the system proposed by Tait, arguing that Selex ES is a "local" option for KCATA. Although Selex ES markets, designs, stages, ships, and services DMR Tier III Trunked Radio Systems and is based in Kansas, Selex ES does not provide a system that is compliant with FTA's Buy America requirement for manufactured goods. As noted above, Buy America applies to manufactured

goods, not services. Additionally, Selex ES did not participate in the initial RFP offered by KCATA. If Selex ES had bid on KCATA's RFP it too would have needed a non-availability waiver of the Buy America requirements.

Therefore, based on the information supplied in support of KCATA's request for a Buy America waiver for the DMR Tier III Trunked UHF Voice radio system that is compatible with its current system, including NIST's inability to locate a domestic manufacturer that currently produces a similar system and that no other entity was able to establish that it makes a Buy America complaint system, FTA hereby waives its Buy America requirements for the DMR Tier III Trunked UHF Voice radio system on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement for the DMR Tier III Trunked UHF Voice radio system by KCATA.

Issued on April 14, 2016.

**Dana Nifosi,**

*Deputy Chief Counsel.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2016-0005]

#### Notice of Buy America Waiver for Special Trackwork Turnout Switch Components.

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Buy America waiver.

**SUMMARY:** In response to the request of the Detroit Transportation Corporation (DTC) for a Buy America non-availability waiver for the procurement of two special trackwork turnout switch components (switch), 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 the procurement by DTC for the switch.

**DATES:** This waiver is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Laura Ames, FTA Attorney-Advisor, at (202) 366-2743 or [Laura.Ames@dot.gov](mailto: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 DTC for the procurement of the switch, 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). 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).

DTC is the owner and operator of the Detroit People Mover, which is the largest municipal rail system in Michigan. It is a fully automated light rail system that operates twelve rail cars between thirteen passenger stations on an elevated single track in a 2.9 mile loop in Detroit's central business district. In March 2015, DTC solicited bids to procure special trackwork switch point for Turnout 3, which is located adjacent to the Maintenance Facility Building and provides access to the building. The special trackwork of concern was originally procured from Germany (by Krupp Stahl AG) and is of European standards, using AREMA 115RE rail throughout the turnout with special 60E1A1 (formerly Zu-160) track point section. The project includes replacing stock rails that connect the switch point section to the original running rails, as well as rubber pads; both the rails and pads will be sourced domestically. The waiver only applies to the switch component of the project.

DTC issued the first RFP in March 2015 to thirteen companies. DTC received no responses. It contacted all the companies, and reissued the RFP in May 2015 to six firms that expressed an interest in the project. From this RFP, DTC only received one proposal, from Delta Railroad Construction, Inc. (Delta).

Delta, however, cannot comply with Buy America requirements because the only manufacturer of the switch is a German company. To change the manufacturer, Delta would need to re-engineer the switch and modify the "frog" section and guideway elements; this design would need to be certified. Delta would then need to locate a domestic source to manufacture the re-engineered switch. Upon installation, the proprietary software designer of the automated control train system would need to certify the switch's performance in order to ensure it could be safely used with the existing guideway switch machines.

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 DTC Buy America waiver request (81 FR 15406), 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 of DTC and the lack of any comments, FTA is granting a non-availability waiver for the procurement of the switch described above, on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement of the switch described above by DTC.

Issued on April 14, 2016.

**Dana Nifosi,**

*Deputy Chief Counsel.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2016-0004]

#### Notice of Buy America Waiver for Ductless Mini-Split Air Conditioning Systems

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Buy America waiver.

**SUMMARY:** In response to requests received from the Indianapolis Public Transportation Corporation (IPTC) for a Buy America non-availability waiver for the procurement of an inverter-driven ductless mini-split system air conditioner; the York Adams Transportation Authority (YATA) for ductless split system air conditioning units; the Key West Transit (KWT) for a ductless mini-split mechanical system for the City of Key West Public