

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).

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 Replacement 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.

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.

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, and Replacement Parts are necessary for mid-life maintenance of the rail vehicles. Due to its unsuccessful efforts to identify domestic manufacturers, NCTD seeks a non-availability waiver of the Buy America requirements for the various Replacement Parts. FTA published a notice in the **Federal Register** announcing the Buy America waiver request (Docket No. FTA–2016–0036) and sought comments from all interested parties, including potential vendors and suppliers. The comment period closed on November 14, 2016, and no comments were received.

Therefore, based on the information provided in support of NCTD’s request for a Buy America waiver and the lack of any comments, FTA hereby waives its Buy America requirements for the procurement of the various Replacement Parts on the grounds that the manufactured product is not available in the U.S. This waiver is limited to the purchase of replacement parts for the 12 DMUs which will be acquired for the replacement of the components over several phases from 2018 through 2026.

The waiver is effective for all phases of these projects.

**Ellen Partridge,**  
*Chief Counsel.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA–2016–0038]

#### Notice of Buy America Waiver for Radio Consoles

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

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

**SUMMARY:** In response to Greater Dayton Regional Transit Authority’s (GDRTA) request for a Buy America non-availability waiver for the procurement of radio consoles, which would be a part of GDRTA’s new communication system (“radio consoles”), 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 a single procurement by GDRTA for the radio consoles.

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

**FOR FURTHER INFORMATION CONTACT:** Cecelia Comito, FTA Assistant Chief Counsel, at (202) 366–2217 or [cecelia.comito@dot.gov](mailto: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 GDRTA for the procurement of radio consoles 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).

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 adopted of a mixed communication system for the agency, which would employ both voice and cellular data systems. GDRTA would join Montgomery County's 800 MHz 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 also must be programmed to use the County's 800 MHz 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 currently are manufactured in Illinois, the other components are manufactured in Mexico. Thus, GDRTA submitted a waiver request based on non-availability under 49 CFR 661.7(c)(1).

On Tuesday November 1, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing the Buy America waiver request (81 FR 211) seeking

comment from all interested parties, including potential vendors and suppliers. The comment period closed on November 15, 2016, and no comments were received.

Therefore, based on the information supplied in support of GDRTA's request for a Buy America waiver for the radio consoles, FTA hereby waives its Buy America requirements for the radio consoles on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement for the radio consoles by GDRTA.

**Ellen Partridge,**  
*Chief Counsel.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2016-0035]

#### Notice of Buy America Public Interest Waiver for Hurricane Sandy Emergency Relief Work Performed for the World Trade Center

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

**ACTION:** Notice Buy America waiver.

**SUMMARY:** The Federal Transit Administration (FTA) received a request from the Port Authority of New York and New Jersey (PANYNJ) for a Buy America public interest waiver for the procurement of equipment to replace what was damaged at the World Trade Center Transportation Hub (WTC Hub) project during Hurricane Sandy. A public interest waiver is needed because Hurricane Sandy damaged an existing construction site that receives federal funds but is not subject to FTA's Buy America requirements and the only option PANYNJ had to implement Sandy recovery work was to replace the damaged equipment with the same equipment. 49 U.S.C. 5323(j)(2)(A) and 49 CFR 661.7(b). In accordance with 49 U.S.C. 5323(j)(3)(A), FTA provided notice of the public interest waiver request and sought comment on whether to grant the request. FTA received one comment in support of the waiver, and no comments objecting to the waiver. Therefore, FTA is issuing a general public interest waiver for two PANYNJ Hurricane Sandy grants, NY-44-X005 and NY-44-X014. This public interest waiver is limited to the Hurricane Sandy recovery projects at the WTC Hub only and does not apply to separately funded resiliency projects.

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

**FOR FURTHER INFORMATION CONTACT:** Cecelia Comito, FTA Assistant Chief Counsel, (202)366-2217 or [Cecelia.comito@dot.gov](mailto:Cecelia.comito@dot.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to announce that FTA is granting a public interest waiver to the Port Authority of New York and New Jersey (PANYNJ) for the procurement of replacement equipment damaged by Hurricane Sandy at the World Trade Center Transportation Hub (WTC Hub) project.

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). If, however, FTA finds that the application of this requirement would be inconsistent with the public interest, it may waive this requirement. 49 U.S.C. 5323(j)(2)(A). In determining whether the conditions exist to grant a public interest waiver, FTA will consider all appropriate factors on a case-by-case basis, unless a general exception is specifically set out in this part. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(b).

On May 13, 2015, PANYNJ requested a Buy America waiver for the replacement or repair of equipment damaged by Hurricane Sandy at the WTC Hub because the WTC Hub project is being constructed pursuant to a grant awarded in 2003, it is not feasible to replace the damaged equipment with equipment that is different than that used in the original project and it is in the public's interest to repair the damage at the WTC Hub as quickly as possible. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(b). Additionally, the underlying project is not subject to FTA's Buy America requirements.

The September 11, 2001 terrorist attacks on the World Trade Center resulted in extensive damage to the WTC Hub. In August 2002, the Federal Emergency Management Agency (FEMA) entered into a memorandum of agreement with the U.S. Department of Transportation under which FEMA agreed to provide \$2.75 billion to cover expenses incurred in repairing or rebuilding public transportation facilities and systems damaged by the September 11, 2001 terrorist attacks. Under the agreement, FTA would serve as the lead agency to oversee the grant and the construction of the project. In December 2003, FTA entered into a grant agreement with PANYNJ to