

of San Diego County in southern California. This will provide the required environmental documentation for a full Presidential Permit for the POE and allow FHWA/Caltrans and GSA to proceed with acquisition of right-of-way and construction of SR-11 and the Otay Mesa East POE, respectively.

Future SR-11 would begin at approximately the SR-905/SR-125 interchange and proceed easterly approximately 2.1 miles to a new, approximately 100-acre POE. The project will also either determine a route to the existing CVEF that serves the existing Otay Mesa POE to the west or will provide a second CVEF (approximately 20 acres) dedicated to the proposed Otay Mesa East POE. Within the limits of and adjacent to the study area, there are biological resources, planned land uses, paleontological resources, cross-border concerns, and potential traffic management, air quality, and growth issues.

Preliminary Alternatives/Design Variations under consideration include: (1) Taking no action; (2) the option to achieve the project's purpose and need through accommodation of pedestrians, cyclists, transit, and other transportation systems/demand management measures alone, without implementation of SR-11 and the new POE; (3) SR-11 toll implementation options; (4) the options of building two interchanges between SR-11 and local roadways, or one interchange only, with the exact locations of the interchanges to be determined after consideration of public input; and (5) the options of utilizing the existing CVEF at the existing Otay Mesa POE to also serve the proposed Otay Mesa East POE versus construction of a new CVEF adjacent to the new POE. For all alternatives/design variations, transportation systems/demand management measures and options to reduce vehicle idling time, and associated air pollutant emissions at the POE will be analyzed.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and Local agencies; Native American organizations; private organizations; and citizens who have previously expressed or are known to have interest in this proposal.

During future project development, prior to draft EIS circulation, a public scoping meeting will be held on December 4, 2008, from 5 p.m. to 7:30 p.m. at Ocean View Hills Elementary School, located at 4919 Del Sol Boulevard, San Diego, California. In addition, a public hearing will be held after publication of the draft EIS. Public

notices will be given regarding the time and place of the meeting and hearing.

To ensure that the full range of issues relating to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS/EIR should be directed to FHWA and/or Caltrans at the addresses provided above.

Issued on: October 30, 2008.

Nancy Bobb,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E8-26365 Filed 11-4-08; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2008-0048]

Notice of Buy America Waiver Request by the Regional Transportation Commission of Southern Nevada for Bus Rapid Transit Rolling Stock

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Buy America waiver request and request for comments.

SUMMARY: The Regional Transportation Commission of Southern Nevada (RTC) has asked the Federal Transit Administration (FTA) to waive its Buy America requirements to permit it to purchase Bus Rapid Transit Vehicles from Wright Group (Wright) to be designed and manufactured in the United Kingdom. This request comes after the RTC awarded a contract to Wright but before the award of an FTA grant to the RTC. The RTC has asked for a waiver on the dual bases of public interest and non-availability. FTA seeks public comment on whether it should grant RTC's request on the basis of non-availability only. This Notice sets forth the RTC's arguments for a non-availability waiver and seeks comment.

DATES: Comments must be received by November 12, 2008. 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-2008-0048. All electronic submissions must be made to the U.S. Government electronic site at www.regulations.gov. Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web site:* 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.

(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 make reference to the "Federal Transit Administration" and include docket number FTA-2008-0048. Due to security procedures in effect since October 2001, 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 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 www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For questions please contact Jayme L. Blakesley at (202) 366-0304 or jayme.blakesley@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to seek public comment on whether the Federal Transit Administration should waive its Buy America requirements in 49 CFR Part 661 for fifty (50) Bus Rapid Transit vehicles to be manufactured and assembled in the United Kingdom by Wright Group (Wright) for the Regional Transportation Commission of Southern Nevada (RTC). Because the RTC has already awarded a contract to Wright, it has asked for a post-award waiver.

In its request for a waiver, a copy of which has been placed in the Docket, Nevada RTC describes the benefits "of introducing and operating visually attractive, advanced technology, high capacity vehicles." The RTC states that it "has largely foregone more expensive light rail, heavy rail, or monorail alternatives." As an example, Nevada RTC stated that it "converted its Downtown Connector Project into a [Bus Rapid Transit] Project, at a

significant cost savings over the prior rail alternatives.”

The source of this waiver request is a 2005–2006 “Rapid Transit Vehicle” procurement conducted by Nevada RTC to implement its Downtown Connector Project. The Request for Proposals (RFP) issued by the RTC in November 2005 was for fifty (50) Rapid Transit Vehicles, with two options, each for an additional fifty (50) vehicles. The RTC structured the RFP as a locally funded procurement without imposing many of the standard Federal requirements like Buy America and Cargo Preference. Because of a drop in sales tax revenues, the RTC’s local revenue source, the feasibility of funding this procurement with local funds has been significantly diminished. For this reason, the RTC has decided to utilize Federal funds and to seek a Buy America waiver for this vehicle procurement.

The RTC recounts the key points of the proposal and evaluation process as follows:

1. Six (6) firms submitted proposals in response to the RFP: North American Bus Industries (NABI); Alexander Dennis, Ltd (ADL); New Flyer; Advanced Public Transport Systems, BV (APTS); Irisbus/Iveco, and Wright Group (Wright).

2. NABI and ADL were found to not be “technically acceptable” because the vehicles proposed did not meet the design criteria in the RFP.

3. New Flyer was found to be non-responsive because it failed to price the option vehicle portion of the order.

4. No challenge or protest was filed regarding either the technical acceptability finding or the non-responsiveness finding.

5. APTS, Irisbus, and Wright were found technically acceptable, and were evaluated and ranked under the criteria set forth in the RFP.

6. A competitive range was established (in accordance with the RFP) consisting of the two highest ranked proposals, Irisbus and Wright. Those two firms were requested to submit Best and Final Offers (BAFOs).

7. Following evaluation of the BAFOs, the RTC decided to divide the vehicle order between Irisbus and Wright (as permitted by the RFP). However, Irisbus subsequently elected not to proceed, and the RTC thereafter entered into a contract with Wright for the entire base order of fifty (50) vehicles, plus an option to purchase 50 additional vehicles.

Because the RTC structured the RFP as a locally-funded procurement, it “did not request, and did not receive the Buy America certification forms that are normally executed by proposers to

indicate their compliance or non-compliance with the Buy America requirements for rolling stock.”

In its request, the RTC notes that “no responsive and responsible proposal was received offering a product produced in the United States.” Moreover, “although Wright is not providing a Buy America-compliant vehicle, it has developed and intends to implement a business plan to achieve compliance with the Buy America requirements.” It also identifies several important elements of Wright’s business plan for achieving compliance with the Buy America requirements in the future, and asserts that while Wright is taking meaningful steps on the path toward compliance, “from a business point of view, achieving compliance with Buy America is a process that simply cannot be achieved in a single initial sale to a domestic purchaser. Relationships and business arrangements with suppliers must be developed to be able to meet the domestic content requirement, and more importantly, the capacity and means must be established (normally through a relationship with a third party) to be able to meet the requirements of final assembly in the U.S.”

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). One such exception is if applying the Buy America requirements “would be inconsistent with the public interest.” 49 U.S.C. 5323(j)(2)(A). A second exception is if “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.” 49 U.S.C. 5323(j)(2)(B).

In arguing for a post-award waiver, the RTC asserts that “there is no statutory restriction on FTA’s authority and discretion to grant a Buy America waiver on a post-award basis, and the granting of a post-award waiver is a reasonable interpretation of the applicable statute and the implementing regulations.” Specifically, the RTC states, “the statutory Buy America language in 49 U.S.C. 5323 is a condition on the granting of Federal funds. Thus, as long as the Buy America requirements are met before grant award, the statute is satisfied.”

While FTA appreciates the merits of RTC’s request for a post-award Buy

America waiver,¹ FTA cannot consider a public interest post-award waiver under these circumstances. First, the award contemplated in FTA’s regulations refers to the award between a recipient of FTA funds and its vendor(s). FTA has never interpreted the “award” to be defined as the awarding of the FTA grant. Furthermore, only recently has FTA been given the statutory authority to issue post-award waivers as a result of section 3023(i)(5)(C) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109–59). Congress, however, precluded post-award waivers on the basis of public interest, specifying that the only basis for post-award waivers was for non-availability. Consequently, the only post-award waivers granted to date have been on the basis of non-availability in cases in which the contractor has made a certification of compliance with the requirements in good faith but, for reasons not foreseen at the time of the initial RFP, compliance was rendered impossible or impracticable.

“In determining whether the conditions exist to grant a post-award non-availability waiver, [FTA] will consider all appropriate factors on a case-by-case basis.” 49 CFR 661.7(c)(3). Such factors will include “the status of other bidders or offerors who are Buy America compliant and can furnish domestic material or products on an FTA-funded project,” 72 FR 53691 (Sept. 20, 2007), and “may include project schedule and budget.” 71 FR 69415 (Nov. 30, 2006). In addition, FTA will look to “existing precedents in public contracting law and practice.” 71 FR 69416 (Nov. 30, 2006).

FTA notes that, unlike with public interest waivers, it is not required to publish a notice in the **Federal Register** before waiving its Buy America

¹ RTC presented five arguments in favor of a post-award, public interest waiver:

1. The Buy America waiver is in the public interest because it will promote the entry into the U.S. market of a significant new supplier that will provide a high quality, advanced BRT vehicle.
2. The Buy America waiver is in the public interest because it will promote the implementation of a highly successful BRT project and demonstrate the viability of BRT as an alternative to rail.
3. The Buy America waiver is in the public interest because it will allow the introduction into the U.S. market of a hybrid BRT vehicle with innovative technology.
4. The Buy America waiver is in the public interest because Wright Group has achieved significant U.S. content for this vehicle [of approximately 30%] and is implementing a plan to achieve full compliance.
5. The granting of a Buy America waiver in this case is consistent with other circumstances in which FTA has found it in the public interest to grant a Buy America waiver.

requirements on the basis of non-availability. In this instance, however, FTA is proceeding with an abundance of caution, given the unique circumstances by which a prospective FTA grantee issued a request for proposals without the inclusion of the traditional Buy America clause, intending to fully underwrite the contract using exclusively local funding. Therefore, in order to understand completely the facts surrounding the RTC's request, FTA seeks comment from all interested parties regarding the RTC's justifications. A full copy of the RTC's petition has been placed in docket number FTA-2008-0048, along with a letter written by ISE Corporation supporting the RTC's request. Please submit comments by November 12, 2008. Late-filed comments will be considered to the extent practicable.

Issued this 29th day of October 2008.

Severn E.S. Miller,
Chief Counsel.

[FR Doc. E8-26423 Filed 11-4-08; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 16, 2008, and comments were due on September 15, 2008. No comments were received.

DATES: Comments must be submitted on or before December 5, 2008.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202-366-5737; or *e-mail*: jean.mckeever@dot.gov. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Capital Construction Fund and Exhibits.

OMB Control Number: 2133-0027.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. citizens who own or lease one or more eligible vessels and who have a program to provide for the acquisition, construction or reconstruction of a qualified vessel.

Forms: None.

Abstract: This information collection consists of an application for a Capital Construction Fund (CCF) agreement under 46 U.S.C. 53501, *et seq.*, and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Annual Estimated Burden Hours: 2,865 hours.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

(Authority: 49 CFR 1.66.)

Issued in Washington, DC, on October 30, 2008.

Murray Bloom,

Acting Secretary, Maritime Administration.
[FR Doc. E8-26427 Filed 11-4-08; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA-2008-0166]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 5, 2009.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA-XX-XX] by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
Telephone: 1-800-647-5527.

- *Fax:* 202-493-2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may