

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

rebuild the WTC Hub. Because the WTC Hub project was funded with FEMA grant funds, FTA's Buy America requirements did not apply to the project.

In October 2012, the WTC Hub project was an active construction site, with an estimated project completion date of December 2015. Hurricane Sandy caused extensive damage to the construction site, resulting in more than \$214 million in damage to the construction site. FTA awarded PANYNJ two grants—NY-44-X005 for \$54.24 million and NY-44-X014 for \$159.72 million—in Hurricane Sandy recovery funds to be used for recovery and emergency repair work for the WTC Hub project. Because the repair work was for an ongoing construction project, PANYNJ was required to use existing contracts that were originally procured in accordance with the requirements for the FEMA-funded WTC Hub project. To apply FTA's Buy America requirements to replace or repair equipment installed on an ongoing construction project would result in significant delay to completion of the project, impact contracts awarded under the FEMA funds, and potentially impact previously provided warranties. Moreover, a public interest waiver would maintain overall consistency of administration, oversight and implementation of both the ongoing WTC Hub project and the WTC Hurricane Sandy recovery work.

On November 4, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing PANYNJ's Buy America waiver request (81 FR 76999) seeking public comment. The comment period closed on November 14, 2016, and FTA received one comment. The comment was provided by a private citizen who supports granting the waiver. The commenter noted that the WTC Hub is a critical connection for Lower Manhattan employers and New Jersey employees. The commenter also noted while projects that abide to the Buy America requirements promote domestic industry and the livelihoods or hard-working Americans, that occurrences like Hurricane Sandy demonstrate the need for flexibility to waive Buy America under certain circumstances.

Accordingly, because the original project was funded by FEMA and therefore, not subject to FTA's Buy America regulations, and the lack of any comments opposing the waiver, FTA is granting a general public interest waiver of FTA's Buy America requirements for the two grants, NY-44-X005 for \$54.24 million and NY-44-X014 for \$159.72

million—awarded to PANYNJ. 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.

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

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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 [cecilia.comito@dot.gov](mailto:cecilia.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