

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration**

[FRA–2024–0122]

**Notice of Proposed Nonavailability Waiver for the Alabama State Port Authority To Purchase Two Rubber-Tired Gantry Cranes**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice; request for comment.

**SUMMARY:** The Federal Railroad Administration (FRA) is seeking comments on whether to grant a waiver of its Buy America requirements to the Alabama State Port Authority (ASPA) for two rubber-tired gantry cranes, which are not produced in the United States, for use in the Rail Expansion, Rehabilitation, and Modernization Project—Montgomery Intermodal Container Transfer Facility (Project). The Project received funds under the Fiscal Year 2022 Consolidated Rail Infrastructure and Safety Improvements (CRISI) program; therefore, FRA's Buy America requirements apply to the Project. The proposed waiver would apply to two rubber-tired gantry cranes based on the domestic nonavailability of the cranes. The proposed waiver would not apply to any construction materials, and therefore, FRA is not waiving any applicable requirements under the Buy America, Buy America Act (BABA).

**DATES:** Comments must be received by December 4, 2024.

**ADDRESSES:** Please submit all comments electronically to the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and follow the instructions for submitting comments.

*Instructions:* All submissions must refer to the Federal Railroad Administration and the docket number in this notice FRA–2024–0122. Note that all submissions received, including any personal information provided, will be posted without change and will be available to the public on <https://www.regulations.gov>. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or at <https://www.transportation.gov/privacy>.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Shreyas Bhatnagar, Regional Supervisor, Office of Regional Outreach & Project Delivery—Southcentral Region, Office of Railroad Development, FRA, telephone: (202) 617–0212, email [Shreyas.Bhatnagar@dot.gov](mailto:Shreyas.Bhatnagar@dot.gov). For legal questions, please contact Thomas Lis,

Attorney-Advisor, Office of the Chief Counsel, FRA, telephone: (847) 921–7344, email [Thomas.Lis@dot.gov](mailto:Thomas.Lis@dot.gov).

**SUPPLEMENTARY INFORMATION:****I. Project History and Background**

On March 15, 2022, ASPA received \$67,300,000 for the Project as directed by H.R. 2471, div. L, section 417, Joint Explanatory Statement, page 132, under FRA's CRISI program. The Project is a planned intermodal container transfer facility located adjacent to the main CSX rail line between Montgomery and Mobile, Alabama. The Project will consist of an approximately 15,000-foot side-track, two 3,500-foot process tracks, and one 3,500-foot support track located under two rubber-tired gantry cranes, a container storage yard, and associated buildings and features required to support the operation. The Project will provide an alternate shipping option for existing businesses between the Port of Mobile and central Alabama, reduce container storage congestion at the port, and decrease truck traffic on Interstate 65. On June 27, 2023, ASPA requested a waiver of FRA's Buy America requirements for two rubber-tired gantry cranes, which ASPA determined are necessary for the Project. Following its initial request, ASPA further advanced its procurement process. ASPA revised its request on March 6, 2024, which included additional information from ASPA's procurement process.

This notice summarizes FRA's Buy America requirements, ASPA's request for a waiver, and FRA's proposed waiver.

**II. FRA's Buy America Requirements and Policy**

Projects that receive funding under FRA's CRISI Program are subject to FRA's Buy America requirements. FRA's Buy America requirements include both: (i) FRA's statutory requirements for steel, iron, and manufactured goods at 49 U.S.C. 22905(a); and (ii) requirements under BABA and related guidance at 2 CFR 184.6 for construction materials. This means that FRA can fund a project "only if the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 22905(a). The FRA requirements are more restrictive than what is required under BABA. In addition, FRA-funded projects must also comply with the relevant provisions of BABA, including the requirement that all construction materials used in the project must also be produced in the United States. Pub. L. 117–58, 70914(a); 2 CFR 184.6. FRA is not proposing to waive the applicable BABA

requirements for construction materials used in the Project, and therefore this proposed waiver would not apply to any construction materials used in the Project.

FRA strictly enforces compliance with its Buy America requirements to ensure that FRA-funded projects maximize the use of materials produced in the United States. FRA expects recipients to work with suppliers to conduct thorough market research and adequately consider, where appropriate, qualifying alternate items, products, or materials. Compliance with FRA's Buy America requirement supports domestic industry and well-paying jobs.

**III. FRA's Authority To Waive Buy America Requirements**

There are limited circumstances in which FRA can waive its Buy America requirements under section 22905(a) and BABA. FRA will grant a waiver request that is consistent with the statutory criteria for a waiver and where a project sponsor has adequately justified the need for a waiver.

FRA may waive its Buy America requirements if FRA determines that: applying the Buy America requirements would be inconsistent with the public interest; 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; rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or including domestic material will increase the cost of the overall project by more than 25 percent. 49 U.S.C. 22905(a)(2); see also Public Law 117–58, sec. 70914(b) (prescribing similar statutory conditions for waivers); and 2 CFR 184.7 (doing the same).

Specifically, when determining whether 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 pursuant to 49 U.S.C. 22905(a)(2)(B), FRA considers whether the recipient has used appropriate due diligence, such as market research or by soliciting proposals through an open procurement process, to identify domestic products or domestically available alternative products that meet the recipient's specifications. A comparable product that performs a similar function is not necessarily a domestic alternative; the product must also meet the recipient's specific requirements. FRA's statutory requirements do not require recipients to change product specifications in order to utilize domestic products that

do not meet the recipient's original specifications. If there are no domestically produced products that also meet the recipient's specifications, and the recipient has exercised appropriate diligence, FRA may waive its Buy America requirements based on nonavailability, consistent with 49 U.S.C. 22905(a)(2)(B).

If FRA determines a waiver is appropriate, FRA will provide notice and seek comment from the public in accordance with the requirements of both section 22905(a) and BABA, if applicable. In addition, FRA will consult with the National Institute of Standards and Technology's Manufacturing Extension Partnership before granting a waiver, consistent with section 70916 of BABA. Unless otherwise specified, waiver decisions are non-precedential and are only applicable to the entities and products for the specific project identified in the final decision.

#### IV. Summary of Products Requiring Waiver

ASPA requests a waiver for two (2) rubber-tired gantry cranes, including spreaders. The total value of the non-compliant materials is 7–8 percent of the total project cost.

#### V. ASPA's Request for Waiver

In its request for a waiver, ASPA described its efforts to identify domestic sources and consider the use of alternative products. ASPA conducted a market research study to determine the availability of rubber-tired gantry cranes from domestic manufacturers and to get ahead of long-lead times in manufacturing. The study found one U.S.-based manufacturer who had made similar products; however, this manufacturer had not made a product that met the technical specifications ASPA developed for the Project. ASPA issued a request for proposals (RFP) in late 2023 based on its technical specifications. ASPA contacted six manufacturers, including the sole U.S.-based manufacturer identified in ASPA's market research. Of the six manufacturers contacted, five acknowledged receipt, and three submitted proposals. However, only non-domestic manufacturers whose products would not be complaint with Buy America requirements submitted proposals; the sole U.S.-based manufacturer declined to submit a proposal, with no reasons given in their email response.

Upon receipt and confirmation of the three responsive bids, ASPA conducted an evaluation of bids using price, performance, compliance with ASPA's

technical specifications, references and quality track record of similar equipment delivered and operating in the U.S., schedule, geographic location of parts and service, alternatives offered and substitutions, and warranties. ASPA used a point system to evaluate and rank the proposals. Based on its review, ASPA has selected a preferred manufacturer for the crane, which ASPA indicated will be assembled domestically, but will not be manufactured in the US. FRA was not involved in ASPA's procurement process. FRA's role is limited to reviewing ASPA's request for a waiver, consistent with 49 U.S.C. 22905(a)(2).

Due to the lack of responsive bids from domestic manufacturers and based on its market research, ASPA has concluded that cranes that meet FRA's Buy America requirements are not domestically available. In the absence of a waiver, ASPA asserts that it would not be able to deliver the Project, as planned operations are not possible without two rubber-tired gantry cranes meeting ASPA's technical specifications.

#### VI. Findings and Proposed Waiver

FRA has preliminarily determined that the two rubber-tired gantry cranes, including spreaders, that meet ASPA's technical specifications are not produced in the United States in a sufficient and reasonably available amount or satisfactory quality, consistent with 49 U.S.C. 22905(a)(2)(B). FRA finds ASPA has conducted appropriate due diligence through market research and an open procurement process to identify potential domestic suppliers for the products. ASPA's efforts included a market research study that identified one potential supplier that ultimately did not respond to ASPA's RFP for the Project. Based on its review of the waiver request and ASPA's market research, FRA proposes to waive its Buy America requirements for the products listed in section IV of this notice. FRA is not proposing to waive any requirements under BABA, as the proposed waiver does not apply to construction materials used in the Project.

The proposed waiver would apply only to products listed above for use in the Project, as described in the grant agreement between FRA and ASPA. The proposed waiver would not apply to other FRA recipients or to other grants that might be made to ASPA for other projects. The proposed waiver will expire upon the end of the period of performance and closeout of the grant agreement for the project, estimated to be April 30, 2028.

#### VII. Request for Comment

FRA will consider comments received during the 15-day comment period, consistent with BABA and 2 CFR 184.7. FRA may consider comments received after this period to the extent practicable. Consistent with 49 U.S.C. 22905(a)(4), if FRA determines it is necessary to waive its Buy America requirements, FRA will publish its decision in the **Federal Register** and provide an opportunity for public comment on such finding for a reasonable period of time not to exceed 15 days. After such period, FRA's decision will be effective.

Issued in Washington, DC.

**Amitabha Bose,**  
Administrator.

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Notice of Meeting of the Transit Advisory Committee for Safety

**AGENCY:** Federal Transit Administration, Department of Transportation.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Federal Transit Administration (FTA) announces a public meeting of the Transit Advisory Committee for Safety (TRACS).

**DATES:** The TRACS meeting will be held on December 4, 2024, from 10 a.m. to 4:30 p.m. Eastern Time and December 5, 2024, from 9 a.m. to 2 p.m. eastern time. Requests to attend the meeting in person or virtually must be received no later than November 29, 2024. Requests for disability accommodations must be received no later than November 29, 2024. Requests to verbally address the committee during the meeting must be submitted with a written copy of the remarks to the U.S. Department of Transportation (DOT) no later than November 29, 2024. Requests to submit written materials to be reviewed during the meeting must be received no later than November 29, 2024.

**ADDRESSES:** The meeting will be held in person at DOT Headquarters, 1200 New Jersey Avenue SE, Washington, District of Columbia, 20590 and virtually via Zoom for Government. Any committee related requests should be sent by email to [TRACS@dot.gov](mailto:TRACS@dot.gov). The virtual meeting's online access link and a detailed agenda will be provided upon registration. They will also be posted on the TRACS web page at: <https://www.transit.dot.gov/regulations-and->