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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Notice of Proposed Buy America Waivers

#### 49 CFR PART 661

[Docket No. FTA-2012-0009]

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of proposed Buy America waivers and request for comments.

**SUMMARY:** The Federal Transit Administration (FTA) received several requests to waive its Buy America requirements for products used in ticket vending machines—the Mars Electronics International (MEI) Sodeco BNA57/542 Bill Handling Unit, and BNR3-XX, BNR4-XX and BNR5-XX Bank Note Recycler product; and the Nextek Corporation (Nextek) BV-6000AG (BV-6000) Currency Validator Tekpak. FTA seeks public comment before deciding whether to grant the requests.

**DATES:** Comments must be received by [insert date thirty days after publication of notice].

Late filed comments will be considered to the extent practicable.

**ADDRESSES:** Please submit your comments by only one of the following means, identifying your submissions by docket number FTA-2012-0009. All electronic submissions must be made to the U.S. Government electronic site at [www.regulations.gov](http://www.regulations.gov). Commenters should follow the instructions below for mailed and hand delivered comments.

- (1) *Web site*: [www.regulations.gov](http://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 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must refer to the “Federal Transit Administration” and include docket number FTA-2012-0009. 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](http://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 Fed. Reg. 19477), or visit [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Jayme L. Blakesley at (202) 366-0304 or [jayme.blakesley@dot.gov](mailto:jayme.blakesley@dot.gov).

**SUPPLEMENTARY INFORMATION:**

The purpose of this notice is to seek public comment on whether the Federal Transit Administration should continue to waive its Buy America requirements for two years for Mars Electronics International (MEI)'s Sodeco BNA57/542 Bill Handling Unit BNR3-XX, BNR4-XX and BNR5-XX Bank Note Recycler products, and the Nextek Corporation's (Nextek) BV-6000AG (BV-6000) Currency Validator Tekpak, or whether FTA should extend the non-shift approach adopted in its 2007 Final Rule (72 FR 53688, September 20, 2007) to the procurement of such devices.

**Waiver Request: MEI Sodeco BNA57/542 Bill Handling Unit**

MEI requested an extension of the Buy-America non-availability component waiver under CFR 661.7(g) for the MEI Sodeco BNA57/542 Bill Handling Units. The FTA granted the initial waiver for these products on July 21, 2000, and has extended the waiver periodically ever since, on December 10, 2003, November 12, 2004, October 20, 2006, and February 23, 2009.

Buy America requires, with few exceptions, that all steel, iron and manufactured goods used in FTA-funded projects be produced in the United States. One such exception is that of non-availability, that in some instances steel, iron, and goods produced in the United States are not produced in the United States in sufficient and reasonably available quantities or are not of a satisfactory quality. Therefore, Congress authorized FTA to waive the above requirement and allow, based on non-availability, the use in an FTA-funded project of steel, iron or manufactured goods produced outside the United States.

According to MEI, the Sodeco BNA57/542 Bill Handling Units includes a multiple bill escrow (up to 15 bills) that enables return of the customer's inserted bills in situations where the

transaction is not complete. The unit has the ability to identify, validate and accept multiple note denominations (US \$1, \$5, \$10, \$20, \$50, \$100) utilizing all optical recognition, and allowing for the acceptance of bills in a face up or face down orientation. It also supports remote download, giving a transit agency the option of downloading new bill recognition software (bill variants) via network from one central location.

MEI's customers include the Washington Metropolitan Area Transit Authority (WMATA), New York City Transit (MTA), and the Bay Area Rapid Transit Authority (BART).

In 1999, to support its initial waiver request, MEI performed a market research study. It found no equivalent products manufactured within the United States. In preparation of the instant waiver request, MEI reviewed its earlier findings and compared them with the known providers of payment systems to the transit market. They found no US manufacturers of functionally equivalent products. Companies they identified who supply a similar product—GAO/Geiseke & Deviran (G&D), Toyocom, and Cashcode—all manufacture their products outside of the United States.

#### **Waiver Request: MEI BNY3-XX & BNR5-XX Bank Note Recycler products**

In a letter dated February 28, 2011, MEI requested an extension of the Buy America non-availability component waiver under CFR 667.7(g) for BNY3-XX & BNR5-XX Bank Note Recycler products. The initial waiver was granted by FTA on October 20, 2008. The Bank Note Recycler (BNR) can accept and validate bank notes and pay them back out as change. The unit has the ability to identify, validate and accept multiple bank note denominations (US \$1, \$5, \$10, \$20, \$50, \$100) utilizing all optical recognition. This allows for the acceptance of bank notes in a face-up or facedown orientation. The unit has multiple-note escrow function (up to 15 Bank

notes) that enables return of the customer's inserted bank notes, in situations where the transaction is not complete, or presentation of bank notes being paid back as change in one bundle. The BNR performs this operation through a single hole in the Ticket Vending Machine (TVM) cabinet. It can utilize up to four separate recycling devices on which bank notes are accumulated and from which bank notes are dispensed as change. The unit also has a "loader cassette" which provides temporary storage of bank notes that are used to restock the recyclers when they become empty due to excessive change making. This "loader cassette" is protected against theft by lock and key and remote download. MEI asserts that there are no US manufacturers of functionally equivalent products. The only other manufacturer they identified is Cashcode, which manufactures outside the United States.

#### **Waiver Request: Nextek Corporation: BV-6000AG (BV-6000) Currency Validator**

Nextek Corporation (Nextek) requests a Buy America waiver for the BV-6000AG (BV-6000) Currency Validator; which is manufactured in Japan by Toyo Networks & System Integration, Ltd. (TNSi) for use in ticket vending machines. After calling for notice and comment, FTA granted a non-availability waiver to the Nextek Corporation for the BV-6000 on October 20, 2006. No domestic supplier has made itself known to FTA.

#### **Applicability of FTA's 2007 Regulatory Amendments**

In its September 2007 Final Rule (72 FR 53688), FTA adopted a non-shift approach to address the aftermarket procurement of replacement components and subcomponents. Prior to the adoption of the Final Rule, procurements of replacements parts were treated as procurements of end products, i.e., not only must the deliverable item be manufactured in the United States, but each component must also be of domestic origin. Implementation of this policy led to confusion

and inconsistencies among transit operators and their suppliers, who urged FTA to adopt a non-shift approach that would treat replacement parts consistent with the procurement of the original product, i.e., if a product was a subcomponent in the initial procurement, it would be treated as a subcomponent in all subsequent procurements. This approach, according to proponents, would foster reasonable predictability and stability in the transit business community, enable bidders and vendors to price proposals more accurately, and allow transit agencies to obtain more competitive pricing.

In the same rulemaking, FTA added the term “system” to its definition of “end product.” Prior to the rulemaking, the manufacturer of a fare collection system filed complaints with FTA concerning the regulatory compliance of a fare collection system manufactured by a competitor. The complainant posited that every mechanical component of the fare collection system should be treated as an end product—ticket vending machines, fareboxes, faregates, etc. not only would have to be manufactured in the United States, but each component of those devices would similarly need to be of domestic origin. Under this interpretation, the petitioners and their customers would have needed a Buy America waiver in order to install a foreign-made bill-handler, bank note recycler, and currency validator into a US-made fare collection device.

In the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub L. 109-59, August 10, 2005), Congress directed FTA to address the procurement of systems to ensure that major system procurements were not used to circumvent Buy America requirements. FTA sought comment on whether it should include “systems” within the definition of “end product.” Commenters generally supported this approach, with a caveat that FTA should tightly monitor the treatment of systems to ensure that procurements of extremely large and complex super-systems would not be able to undermine the intent of FTA’s

Buy America requirements. Among the factors FTA examines in assessing whether a “system” is an “end product” are: (1) whether the items are the subject of a single procurement; (2) whether the parts of that system are under a single warranty; (3) whether the resulting end product was functionally different from a mere assembly of elements or materials; and most importantly; (4) whether the individual parts performed on a integrated basis with the other parts of the system.

Based on SAFETEA-LU and its 2007 rulemaking, FTA believes fare collection devices can be regarded as components, and their constituent parts treated as subcomponents, which, consistent with 49 CFR 661.5(d)(2), could come from any foreign or domestic source, provided that the component itself was manufactured in the United States. A formal FTA adoption this approach would eliminate the need for firms such as MEI and Nextek to seek biennial waivers that would permit the inclusion of foreign subcomponents into their devices, particularly when no interested domestic vendor has identified itself to FTA or the two petitioners during the intervening decade.

FTA invites comment on MEI and Nextek’s waiver request and the classification of such devices as subcomponents from all interested parties. Commenters may wish to address potential ramifications of categorizing these devices as subcomponents, whether there are domestically-manufactured substitutes, whether petitioners have done an adequate job of reaching out to potential domestic manufacturers, and what FTA can do to encourage domestic firms to manufacture products that are the subject of these non-availability waiver requests.

In the interest of transparency, FTA has published copies of MEI's and Nextek's requests to the docket. Interested parties may submit comments on or before [insert date thirty days after publication of notice]. Late-filed comments will be considered to the extent practicable.

Issued this \_1st\_\_\_\_ day of May, 2012.

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Chief Counsel

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