



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2013-0038]

Notice of Proposed Buy America Waiver for the Pad and Rubber Boot of a Concrete Block for a Low Vibration Track System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The New York Metropolitan Transportation Authority (MTA), New York City Transit (NYCT), MTA Capital Construction Company, has requested a Buy America waiver for the pad and rubber boot of a concrete block for its Low Vibration Track (LVT) system on the basis of non-availability. MTA intends to install an LVT system as part of its Second Avenue Subway Project. This notice is to inform the public of the waiver request and to seek public comment to inform FTA's decision whether to grant the request.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION]. 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-2013-0038:

1. **Web site:** <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, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

4. Hand Delivery: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 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-2013-0038. Due to the security procedures in effect since October 2011, 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 <http://www.regulations.gov>. For more information, you may review DOT’s complete Privacy Act Statement in the Federal Register published April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mary J. Lee, FTA Attorney-Advisor, at (202) 366-0985 or mary.j.lee@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek comment on whether the Federal Transit Administration (FTA) should grant a non-availability waiver for the procurement of the pad and rubber boot of the concrete block used in its LVT system for Phase 1 of the Second Avenue Subway 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). A manufactured product is considered produced in the United States if: (1) the manufacturing processes for the product take place in the United States; and (2) 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 waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On June 20, 2013, FTA issued a letter to MTA regarding FTA’s determination that the concrete blocks purchased for MTA’s LVT system were not Buy America compliant because they contained foreign manufactured components—the pad and the rubber boot of each concrete block. However, FTA indicated that it would be willing to entertain a non-availability waiver if MTA met the required conditions under 49 CFR 661.7(c) and provided the following information: (1) the history of the procurement, including the technical specifications for the concrete blocks; (2) the technical feasibility of using other replacement parts manufactured in the United States; and (3) MTA’s market research demonstrating the extent to which manufacturers in the United States are capable and willing to produce the pad and the rubber boot.

On September 11, 2013, MTA formally requested a Buy America waiver for the pad and rubber boot. In its request, MTA reiterated that it specified an LVT system to address operational noise and vibration issues, which had been identified as significant adverse impacts in the Final Environmental Impact Statement and Record of Decision for the Second Avenue Subway Project. The LVT system is, among other things, also designed to meet the National Fire Protection Association requirements and the vertical and horizontal gap tolerances between

the platform and the train floor required to comply with the Americans with Disabilities Act. In addition, according to MTA, the LVT system has a proven performance history and an expected useful life in excess of 60 years, and would meet the performance requirements of MTA-NYCT's standard specifications. Along with these reasons, MTA stated that it had, in good faith, concluded that the concrete blocks were components of the LVT system and believed itself to be Buy America compliant.

According to MTA, it is unable to find a U.S.-manufactured pad and rubber boot. However, upon learning that it likely would have to find a U.S.-manufactured pad and rubber boot, MTA began conducting market research to encourage U.S. manufacturing of the pads and rubber boots. MTA has learned that there may be a U.S. manufacturer in the near future, but any other concrete blocks used in its LVT system would need to undergo testing according to MTA-NYCT's Specification 92 for Low-Profile Low Vibration Booted Blocks. MTA states that this testing would delay the Project for over one year. Therefore, MTA requests a waiver that would be limited to Phase 1 of its Second Avenue Subway Project and understands that it would need to continue its good faith efforts to find a U.S.-manufactured pad and rubber boot.

The purpose of this notice is to publish the request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. FTA also is working with the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), to seek U.S. manufacturers for these components and expects MTA and others to cooperate in this endeavor. A full copy of the request has been placed in docket number FTA-2013-0038.

Dated: December 11, 2013.

Dorval R. Carter, Jr.
Chief Counsel

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