



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2014-0021]

Notice of Buy America Waiver for a Variable Refrigerant Flow HVAC System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to the San Bernardino Associated Governments' (SANBAG) request for a Buy America waiver for a Variable Refrigerant Flow (VRF) HVAC system, the Federal Transit Administration (FTA) hereby waives its Buy America requirements for the VRF HVAC system to be installed at the Omnitrans San Bernardino Transit Center (SBTC). This waiver is limited to a single procurement for the VRF HVAC system for the SBTC, an FTA-funded project.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Richard L. Wong, FTA Attorney-Advisor, at (202) 366-4011 or richard.wong@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for SANBAG's procurement of a VRF HVAC system for the SBTC.

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).

SANBAG requested a non-availability waiver for a VRF HVAC system that will be installed into the SBTC, a multimodal transfer facility in downtown San Bernardino, California that will serve patrons and operators of Omnitrans’ fixed route buses, the newly opened sbX bus rapid transit (BRT) line, the Victor Valley Transit Authority, the Mountain Area Regional Transit Authority, and the Southern California Regional Rail Authority (Metrolink).

FTA selected the SBTC project for award of fiscal year 2011 funding made available pursuant to the Bus and Bus Facilities Program (49 U.S.C. 5309(b)) in support of the U.S. Department of Transportation’s (DOT) Livability Initiative and the Partnership for Sustainable Communities between the U.S. DOT, the U.S. Department of Housing and Urban Development, and the U.S. Environmental Protection Agency (Bus Livability Program). FTA selected each project for the Bus Livability Program based on whether it would, among other things, promote a more environmentally sustainable transportation system. 76 FR 37393, 37397 (June 27, 2011); *see also* 76 FR 68813 (Nov. 7, 2011). More specifically, FTA assessed the project’s ability to “maintain, protect or enhance the environment, as evidenced by environmentally friendly policies and practices utilized in the project design, construction, and operation that exceed the

requirements of the National Environmental Policy Act including items such as whether the project uses a [U.S. Green Building Council] Leadership in Energy and Environmental Design (LEED)-certified design" 76 FR at 37397.

The SBTC is being built to the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) standards and will incorporate a number of sustainable and energy efficient elements. One of those elements is a VRF HVAC system that, among other things, is space saving, has inverter technology, efficiency, and a non-ozone depleting refrigerant that domestic manufacturers of HVAC systems do not provide. According to SANBAG, its contractor was directed to evaluate the substitution of a Buy America-compliant Variable Air Volume (VAV) system, but the contractor advised SANBAG that the VAV system would endanger the project's LEED Gold certification because of the difference in efficiency between the VAV and VRF HVAC systems. In addition, the substitution of a VAV system would require significant changes to the project, such as the alteration of already-erected structural elements that were designed to accommodate a VRF system and additional design changes and plan reviews by the City of San Bernardino.

SANBAG points to a recent non-availability waiver FTA issued to St. Louis' MetroLink for a similar VRF system (79 FR 34653, June 17, 2014), as well as to a blanket non-availability waiver issued by the U.S. Department of Energy (DOE) in 2010 for VRF HVAC systems procured with American Reinvestment and Recovery Act funding (75 FR 35447, June 22, 2010). According to SANBAG, the U.S. DOE's determination of non-availability and FTA's recent St. Louis MetroLink waiver, as well as SANBAG's contractor's research, indicate that this product is not manufactured domestically.

On Monday, September 22, 2014, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** requesting public comment on, among other topics, the merits of SANBAG's waiver request and potential effects of granting the waiver. The public comment period closed on September 29, 2014. FTA did not receive any comments.

Based on SANBAG's assertions that it is unable to procure a U.S.-manufactured VRF HVAC system, which is critical to obtaining LEED Gold certification, and the fact that FTA did not receive any public comments, FTA hereby waives its Buy America requirement for manufactured products under 49 CFR 661.5(d) for the VRF HVAC system. This waiver is limited to a single procurement for the VRF HVAC system for SANBAG's SBTC project.

Dana Nifosi,
Acting Chief Counsel.

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