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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2015-0010]

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 City of Kansas City, Missouri's 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 Vehicle Maintenance Facility (VMF) associated with the Kansas City Downtown Streetcar Project. This waiver is limited to a single procurement for the VRF HVAC system for the VMF, 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 Kansas City's procurement of a VRF HVAC system for the VMF.

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).

Kansas City requested a non-availability waiver for a VRF HVAC system that will be installed into the VMF. The VMF 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 Kansas City, its contractor was directed to evaluate the substitution of a Buy America-compliant Variable Air Volume (VAV) system, but the contractor advised it 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 Kansas City.

Kansas City points to two recent non-availability waivers FTA issued to San Bernardino Associated Governments (79 FR 61129, October 9, 2014) and Rock Island County Metropolitan Mass Transit District (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 Kansas City, the U.S. DOE's determination of non-availability and FTA's recent SANBAG and Rock Island waivers, as well as Kansas City's contractor's research, indicate that this product is not manufactured domestically. Finally, FTA, in collaboration with the National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership, conducted a nationwide search to determine if any company currently manufactures a compatible VRF system that complies with Buy-America. The search revealed that no company currently can provide a Buy-America compliant VRF system that meets Kansas City's specifications.

On Wednesday, July 22, 2015, 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 Kansas City's waiver request and potential effects of granting the waiver. The public comment period closed on August 5, 2015. No comments were received.

Based on Kansas City'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 no public comments were received, 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 Kansas City's VMF project.

Dana Nifosi
Acting Chief Counsel

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