



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Docket No. FTA-2016-0003

Notice of Proposed Buy America Waiver for a Fall Arrest System.

AGENCY: Federal Transit Administration, DOT.

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

SUMMARY: The Federal Transit Administration (FTA) received a request from the Indianapolis Public Transportation Corporation (IPTC) for a Buy America non-availability waiver for the procurement of a Horizontal Lifeline Fall Protection Maintenance Tie Back System (System). IPTC is constructing a new Downtown Transit Center, and according to the Occupational Safety and Health Administration regulations, must provide fall protection for employees performing maintenance on the building. IPTC seeks a waiver for the system because there are no domestic manufacturers of the system that meet the Buy America requirements. 49 U.S.C. 5323(j)(2) and 49 CFR 661.7(c)(2). IPTC issued a request for proposals (RFPs) for procurement of the system, and two firms were identified and showed an interest in providing the system. Neither firm, however, was Buy America-complaint. In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the non-availability waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would apply to a one-time procurement only for the specific fall arrest system identified in the waiver request.

DATES: Comments must be received by [**INSERT DATE 7 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-2016-0003:

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-2016-00XX. 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: Laura Ames, FTA Attorney-Advisor, at (202) 366-2743 or Laura.Ames@dot.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek public comment on whether the FTA should grant a Buy America non-availability waiver

for the Indianapolis Public Transportation Corporation (IPTC) for the procurement of a Horizontal Lifeline Fall Protection Maintenance Tie Back System (the “System”). On June 2, 2015, IPTC requested a Buy America waiver for the System because it is not produced in the United States in sufficiently and reasonably available quantities or of a satisfactory quality. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(c).

IPTC is constructing a new Downtown Transit Center (DTC) in Indianapolis, Indiana that will serve as the hub for public transit. It will include a large indoor public waiting area and bus bays while serving pedestrians, cyclists, and bus riders. Per Occupational Safety and Health Administration (OSHA) regulations, IPTC has a duty to provide fall protection for employees performing maintenance on the new building. IPTC entered into a contract with Weddle Bros. Building Group (WBBG) in early September 2014 for the construction of the DTC. WBBG certified in good faith that it would comply with Buy America. As part of the project, IPTC issued an RFP for the complete design, supply and installation of a fall protection maintenance tie-back system to safeguard personnel to include all cable, intermediate brackets, end terminations, and modifications of structural steel as required for supplementary support of stanchions, user equipment, and attachment to roof structure for a complete and working fall protection maintenance tie-back system. It also included experience criteria for the professional engineer designing the system and a firm that has manufactured at least five (5) similar systems with specific liability insurance policies.

The two firms that responded to the RFP were American Anchor and Pro-Bel Group. Neither firm was able to certify a system as compliant with the Buy America regulations. The cables and tensioning system are not manufactured domestically for Pro-Bel. The hands-free set

ups are not manufactured domestically for American Anchor. IPTC thus requests approval for WBBG to procure a System from Pro-Bel.

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 waiver (non-availability waiver). 49 U.S.C.

5323(j)(2)(B); 49 CFR 661.7(c). Under 49 CFR 661.7(c)(1), "It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States." In addition, "If the Secretary denies an application for a waiver . . . the Secretary shall provide to the applicant a written certification that - the steel, iron, or manufactured goods, as applicable, (referred to in this subparagraph as the 'item') is produced in the United States in a sufficient and reasonably available amount; (i) the item produced in the United States is of a satisfactory quality; and (ii) includes a list of known manufacturers in the United States from which the item can be obtained." 49 U.S.C. 5323(j)(6).

FTA also conducted a scouting search for the fall arrest system through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and

Technology (NIST). The scouting search identified one domestic manufacturer as a potential match for this opportunity: Starr Products in Butler, Pennsylvania. The manufacturer identified has either produced similar products to the fall arrest system, possesses the capabilities to produce a fall arrest system, has produced an item similar to a fall arrest system in the past, or have expressed a business interest in producing a fall arrest system. Upon request from FTA, IPTC reached out to this potential domestic supplier. However, the company does not design or install fall arrest systems as defined in IPTC's project manual. As such, IPTC is pursuing its non-availability waiver application.

The purpose of this notice is to publish IPTC's 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 merits of the request. A full copy of the request has been placed in docket number FTA-2016-0003.

Issued on March 16, 2016.

Dana Nifosi
Deputy Chief Counsel

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