



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Docket No. FTA-2016-0004

Notice of Buy America Waiver for Ductless Mini-Split Air Conditioning Systems.

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to requests received from the Indianapolis Public Transportation Corporation (IPTC) for a Buy America non-availability waiver for the procurement of an inverter-driven ductless mini-split system air conditioner; the York Adams Transportation Authority (YATA) for ductless split system air conditioning units; the Key West Transit (KWT) for a ductless mini-split mechanical system for the City of Key West Public Transportation Facility; and the Springfield Redevelopment Authority (SRA) for ductless mini-split air conditioners for the Union Station Regional Intermodal Transportation Center in Springfield, Massachusetts, the Federal Transit Administration (FTA) hereby waives its Buy America requirements, finding that the materials for which the waivers are requested are not produced in the United States in sufficient and reasonable quantities and of satisfactory quality. This waiver is limited to the specific procurements identified herein.

DATES: This waiver is effective immediately.

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 announce that FTA has granted non-availability Buy America waivers to IPTC, YATA, KWT, and SRA for the

procurement of ductless split system air conditioning units 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(c).

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). "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." 49 CFR 661.7(c)(1).

By way of background, IPTC is constructing its Downtown Transit Center and the contractor and subcontractor hired for the project, Weddle Bros. Building Group, LLC and Commercial Air Inc., previously certified Buy America compliance. After awarding the contract, Commercial Air became aware that the inverter-driven ductless mini-split system air conditioner selected for the center, was non-compliant. Enviroair manufactures this air conditioning system in China, although certain equipment is stocked and shipped from Utica, New York. IPTC selected the Enviroair system, which will be installed in the transit center's information technology room, because it will keep the room constantly cool and is the only way

to cool the room in the space provided. IPTC also hopes to receive Silver LEED certification for the transit center and the Enviroair system is critical for achieving this certification. IPTC identified six other ductless mini-split air condition system manufacturers, all of which are manufactured abroad.

YATA seeks to install multiple ductless split system air conditioning units in its Operations and Maintenance Facility. These units will regulate environmental conditions in areas with specific temperature and/or humidity requirements, such as in server rooms or elevator machine rooms, or in rooms where conventional ductwork is not possible. YATA's successful bidder certified Buy America compliance, although later learned that the units from ECR international-EMI-USA of Utica, New York, are in fact manufactured abroad. YATA identified one ductless split system unit that is manufactured in the U.S. by Modine, however, this unit has a larger capacity than YATA's project requirements for the Operations and Maintenance Facility. Use of this unit would result in constant compressor cycling and a limited lifespan. Moreover, YATA states that it cannot use a standard split system unit as an alternative to the ductless split system, because a standard system is incapable of treating ventilation air and the required ductwork cannot be installed in locations that need environmental control. Therefore, no domestic manufacturer exists that would satisfy YATA's project needs.

KWT is completing construction of its City of Key West Public Transportation Facility, which is a U.S. Green Building Council LEED project and includes many sustainable and efficient elements, including that of the HVAC system. According to KWT's waiver request, the HVAC system is Buy America-compliant, with the exception of the VRF mechanical system which will be placed in three of the electrical, mechanical, and server rooms in the new facility. KWT states that these rooms must be able to function separately from the main operations

building. KWT also is building this facility to be LEED silver certified and the energy-efficient VRF system will help KWT attain this certification. The VRF system sought will also better accommodate spatial constraints since the new facility is surrounded by a landfill, school bus parking lot, and other construction projects. It is also located in a highly-trafficked area, which limits the footprint of the project. Unlike other HVAC systems, the ductless mini-split system will be able to fit into the available space.

KWT is installing a Carrier ductless mini-split system in the facility. Before selecting this system, KWT conducted extensive research and reached out to domestic manufacturers, however, KWT was unable to find a domestically manufactured mini-split air conditioning system. KWT states that it contacted the remaining America manufacturer of VRF HVAC systems and this manufacturer ceased production two years ago.

SRA is constructing the Union Station Regional Intermodal Transportation Center, which includes renovation of the existing Terminal Building and the construction of a six-story parking garage. SRA is seeking to procure nine ductless mini-split air conditioners for the construction project. Each building within the transportation center will have its own HVAC system. SRA states that it is necessary to install ductless mini-split air conditioners in each individual room in order to maintain environs in each room. The air conditioners will be independent of other heating and cooling systems and will be backed up by a generator. Initially, SRA's contractor believed that Trane's product was Buy America-compliant. Subsequently, however, Trane notified SRA that its product was mislabeled and is actually foreign-made. SRA also contacted 8 other companies who manufacture ductless mini-split air conditioners, although none of these companies manufacture the product domestically. As a result, SRA is seeking a non-availability waiver for the ductless mini-split air conditioners as there is no domestic manufacturer.

FTA also conducted a scouting search for ductless air conditioning systems through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). Although the scouting search identified two domestic manufacturers as potential matches for this opportunity, upon further investigation neither company currently produces a system that would meet the stated specifications.

On Tuesday, March 22, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing the Buy America waiver request (81 FR 15409), seeking comment from all interested parties, including potential vendors and suppliers. The comment period closed on March 29, 2016, and no comments were received. Based on the representations from IPTC, YATA, KWT, and SRA, the lack of any comments, and the fact that the NIST supplier scouting search did not identify a domestically made air conditioner system, FTA is granting a non-availability waiver for the procurements of the ductless air conditioning systems described above on the grounds that the manufactured products are not available in the U.S. This waiver is limited to the specific procurements described in this waiver.

Issued on April 14, 2016.

Dana Nifosi
Deputy Chief Counsel

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