



**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Federal Highway Administration**

**Buy America Waiver Notification**

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** This notice provides information regarding FHWA's finding that it is appropriate to grant a Buy America waiver to the Inter-Island Ferry Authority (IFA) of Alaska for procurement of foreign iron and steel components for refurbishment of two ferry vessels, specifically including (i) two sets of reduction gear replacement parts, one for the M/V Stikine ferry and the other for the M/V Prince of Wales ferry; and (ii) one set of pitch control units for the M/V Prince of Wales ferry.

**DATES:** The effective date of the waiver is [insert date one day after publication in Federal Register].

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366-1562, or via e-mail at [Gerald.Yakowenko@dot.gov](mailto:Gerald.Yakowenko@dot.gov). For legal questions, please contact Mr. Patrick Smith, FHWA Office of the Chief Counsel, (202) 366-1345, or via e-mail at [Patrick.C.Smith@dot.gov](mailto:Patrick.C.Smith@dot.gov). Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: <http://www.archives.gov> and the Government Publishing Office's database at: <http://www.access.gpo.gov/nara>.

## **Background**

The FHWA's Buy America regulation, 23 CFR 635.410, requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not produced in the United States in sufficient and reasonably available quantities. This notice provides information regarding FHWA's finding that it is appropriate to grant IFA a Buy America waiver for procurement of non-domestic iron and steel components for refurbishment of two ferry vessels, specifically including (i) two sets of reduction gear replacement parts, one for the M/V Stikine ferry and the other for the M/V Prince of Wales ferry; and (ii) one set of pitch control units for the M/V Prince of Wales ferry. The reduction gear replacement units and pitch control units are not available to be produced using 100 percent domestic steel or iron.

**Background on the IFA System:** The IFA system provides the only ferry service to Prince of Wales (POW) Island, which is the fourth-largest island in the United States with a landmass of 2,577 square miles. It has a population of approximately 6,000. The POW Island is located west of the City of Ketchikan, but is not accessible by road or

bridge. Because of the lack of road access, residents and visitors rely heavily on the IFA ferries to reach POW Island or return to the mainland. The IFA ferries make daily runs between Ketchikan and Hollis, a census-designated place on POW Island. The ferries include passenger and vehicle decks. They carry more than 50,000 passengers and 12,000 vehicles annually.

The IFA provides critical ferry service to businesses and individuals on POW Island. For example, island residents rely on ferry service for access to health care, employment, and markets in Ketchikan including for groceries, goods, and services. In addition, many businesses on POW Island and in Ketchikan rely on this daily transportation connection to transport goods and customers. Finally, passengers brought to the island from the mainland support the island's tourism industry.

Considering the lack of access to POW Island by road or bridge, the IFA system is the only reliable and affordable mode of transportation for many users. The IFA system is critical to users in a way that not all Federal-aid-supported ferry systems are: it is the only available route for owner-occupied vehicles to access the island. Although POW Island may also be accessed by more expensive air travel or much slower cargo barges, the IFA system provides a reliable, middle alternative that is essential to many of its users (including low-income users who cannot afford alternative modes). It also provides transportation security on days when weather prevents travel by air.

The IFA is a public, non-profit corporation organized under Alaska's Municipal Port Authority Act. The IFA is governed by a Board of Directors who are appointed by

the member communities. Although the IFA is separate from the State of Alaska, its operations are dependent on subsidies from the State government. The IFA reports that it runs approximately 75 to 80 percent of its operational costs out of incoming revenue from fares; subsidies from the State cover the remainder. The IFA maintains that current fiscal problems in Alaska have put those subsidies at risk and make it highly unlikely that IFA or Alaska will be able to cover significant cost overruns on the ferry refurbishment project.

**Need for refurbishment of IFA ferries:** The IFA owns two ferries, the M/V Stikine and the M/V Prince of Wales. The M/V Prince of Wales was built in 2002 and the M/V Stikine was built in 2005. The IFA needs to refurbish both ferries to keep them in service and allow them to continue operating safely. The IFA reports that the anticipated service life for these vessels, with proper maintenance and refurbishment, may be up to 50 years. Thus, IFA anticipates that the ferries may have a remaining service life of 25 years to 35 years if they are maintained and refurbished as required. During preliminary engineering, the IFA confirmed that most parts needed for the refurbishment will comply with FHWA's Buy America requirements. The IFA identified only two parts needed for the refurbishment project that could not satisfy FHWA's Buy America requirements: (i) reduction gear replacement parts for both ferries; and (ii) pitch control units for the M/V Prince of Wales.

Based on estimates received from IFA, the two parts requiring waivers constitute approximately 30 percent of the total estimated project cost of approximately \$3 million.

The IFA has confirmed that both the reduction gear replacement parts and the pitch control units can be installed domestically in the shipyard in Ketchikan, Alaska.

The existing reduction gears on both vessels have exceeded their recommended service life and must be replaced. The IFA maintains that there are no satisfactory replacement reduction gears made domestically meeting FHWA's Buy America requirement that will ensure: (i) synchronization with its existing propulsion (or powertrain) system; and (ii) continued safe operation of the ferries. The existing reduction gears on both ferries were manufactured by Reintjes GmbH in Germany. Considering the age and hours of use of the existing reduction gears, the IFA maintains that there is urgent need for the replacement parts to ensure the continued safe transportation of its users. The IFA also maintains the replacement is urgent due to the importance of the IFA system to the communities it serves in terms of access and connectivity. The service life of the replacement reduction gears would be 13 to 15 years.

The IFA also maintains that the existing pitch control units in the M/V Prince of Wales are obsolete and must be replaced. It maintains that there are no satisfactory pitch control units made domestically meeting FHWA's Buy America requirement that will ensure: (i) synchronization with its existing propulsion system; and (ii) continued safe operation of the ferry. The IFA also maintains that timely replacement of this part is necessary to ensure the continued safe transportation of its users and due to the importance of the IFA system to the communities it serves in terms of access and

connectivity. The service life of the replacement pitch control units would be 15 to 20 years.

**Waiver Request and Supporting Information:** The IFA originally submitted a Buy America waiver request to FHWA for the reduction gear replacement parts and pitch control units in September 2018. Prior to submitting its waiver request, IFA sought but failed to identify domestic manufacturers for these products. Consistent with Executive Order 13788, after receiving the request, FHWA requested that IFA seek to maximize the use of goods, products, and materials produced in the U.S. on the project. In response to this request and several iterations of follow-up questions from FHWA, IFA spent the ensuing 12 months seeking to identify domestic manufacturers for the parts that it had not identified in its original search or, if full compliance was not possible, foreign manufacturers that could maximize use of domestic content by using greater quantities of U.S. steel. These search activities continued between September 2018 and September 2019. Although IFA did not identify compliant products, IFA provided information to FHWA supporting its waiver request, including:

- information describing the domestic content characteristics of the manufactured products needed, including the sources and assembly locations of those products;
- information supporting the technical necessity of these specific products for the continued safe operation of the ferries and demonstrating that alternative designs were infeasible;
- information documenting efforts to maximize domestic content even if full

compliance was not possible, including efforts to have foreign manufacturers incorporate domestic steel; and

- information describing the effects of denying the request, including the infeasibility of completing the acquisitions without Federal funding.

For the reduction gears on both vessels, IFA determined that only the original equipment manufacturer, Reintjes GmbH, could produce replacement parts to synchronize with its existing system and ensure continued safe operation. Due to existing supply contracts and warranty requirements for its parts, Reintjes GmbH was unable to offer an option to produce the reduction gears using United States steel.

For the pitch control units on the M/V Prince of Wales, IFA reported the following: it identified a manufacturer in Denmark that could potentially produce the parts using United States steel. However, considering the revised cost of raw materials and the transportation costs for sending the materials from the United States to Denmark, among other factors, this option increased the cost estimate for the pitch control units by approximately \$750,000 compared to pitch control units produced with foreign steel (including both parts and installation). This doubled the total cost estimate for the parts. The IFA also identified a manufacturer in Sweden that could produce an alternate propulsion system for the M/V Prince of Wales using mostly United States content, but this option would increase the project cost by at least \$1.5 million compared to pitch control units produced with foreign steel (including both parts and installation). This more than tripled the total cost estimate for refurbishing the pitch control units.

Moreover, the manufacturer could not guarantee that the alternate propulsion system would properly synchronize with all other existing parts on the M/V Prince of Wales. The IFA determined that these alternatives would be cost prohibitive: if required to purchase one of these options, IFA would not be able to refurbish the vessel. This would effectively end the remaining service life of the M/V Prince of Wales, which could otherwise continue in operation for decades if properly refurbished and maintained. The IFA also maintains that the current fiscal situation in Alaska makes the State government unwilling to increase the existing subsidy to absorb significant cost overruns relative to IFA's estimate for pitch control units produced with foreign steel.

**Public Comments on Waiver Request:** In accordance with the Consolidated Appropriations Act of 2016 (Pub. L. 114-113) and the Continuing Appropriations Act of 2017 (Pub. L. 114-223), FHWA published a notice of intent to issue a waiver on its Web site, <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=155>, on February 19, 2020. The FHWA received six comments in response to the publication. Four comments supported the waiver, one comment was generally opposed to the waiver, and one comment was nonresponsive. The comment FHWA considered non-responsive appeared to request FHWA to publish notice of its waiver finding in the Federal Register, which FHWA does through this notice. The comment opposing the waiver did not offer any information on the availability of compliant products, nor did it suggest specific, additional actions that IFA could take to maximize its use of goods, products, and materials produced in the United States. Thus, IFA has not received any new information

indicating that the subject parts can be produced by domestic manufacturers.

### **Finding and Request for Comments**

Based on all the information available to the Agency, FHWA concludes that there are no domestic manufacturers **of the reduction gear replacement parts and pitch control units needed for refurbishment of the M/V Stikine and M/V Prince of Wales by IFA.** This finding is only for the procurement of non-domestic iron and steel components for refurbishment of two ferry vessels, specifically including (i) two sets of reduction gear replacement parts, one for the M/V Stikine ferry and the other for the M/V Prince of Wales ferry; and (ii) one set of pitch control units for the M/V Prince of Wales ferry.

The IFA and its contractors and subcontractors involved in the procurement of the reduction gear replacement parts and pitch control units are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of Section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 5 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110-161, 23 CFR 635.410)

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Nicole R. Nason,  
Administrator,  
Federal Highway Administration.

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