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4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2022-0084]

Advancing High-Speed Rail Projects Intended for Operations Over 160 Miles Per Hour Through Domestic Sourcing Plans and Buy America Compliance

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Federal Railroad Administration (FRA) is issuing this notice to encourage development of high-speed rail (HSR) system projects intended for operations over 160 miles per hour by establishing a streamlined process for reviewing domestic sourcing and workforce plans. Specifically, this notice summarizes FRA's intent to invite HSR project sponsors to voluntarily submit for review, in advance of receipt of DOT funding, their domestic sourcing and workforce plans. This notice provides further clarification to the December 7, 2022, Notice of Funding Opportunity for the Federal-State Partnership for Intercity Passenger Rail Program, which stated that FRA expects all applicants to comply with Buy America requirements without needing a waiver. However, to obtain a waiver, an applicant must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project. If an applicant anticipates it may need a waiver, the applicant should indicate the need in its application and submit materials necessary for such requests together with its application. This notice provides further detail on the recommended content of these

materials. This notice also serves as an RFI to assist with planning a U.S. domestic content High Speed Rail Industry Exchange Day (Industry Day).

DATES: Applicable on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Comments should refer to docket number FRA-2022-0084 and be submitted at <https://www.regulations.gov>. Search by using the docket number and follow the instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number (FRA-2022-0084) for this Notice and subsequent RFI to assist with planning a U.S. domestic content High Speed Rail Industry Exchange Day.

Note: All comments received, including any personal information, will be posted without change to the docket and will be accessible to the public at <https://www.regulations.gov>. You should not include information in your comment that you do not want to be made public. Input submitted online via <https://www.regulations.gov> is not immediately posted to the site. It may take several business days before your submission is posted.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. David Valenstein, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Room W38-314, Washington, DC 20590; email: david.valenstein@dot.gov; 202-493-6368; Mr. Ryan Arbuckle, Office of Rail Program Development, Federal Railroad Administration, email: ryan.arbuckle@dot.gov; 202-617-0212; Mr. John Johnson, Office of Chief Counsel, 1200 New Jersey Avenue, SE, Room W31-208, Washington, DC 20590; email: john.johnson@dot.gov; 202-384-2421.

SUPPLEMENTARY INFORMATION:

FRA is inviting sponsors of high-speed, steel wheel on steel rail electrically powered passenger railroad projects intended for operations over 160 miles per hour to

voluntarily submit for review their domestic sourcing and workforce plans associated with FRA's Buy America requirements¹ under 49 U.S.C. 22905(a) and section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58). Project sponsors may begin working with FRA regarding the plans in connection with applying for federal financial assistance, including the Federal-State Partnership for Intercity Passenger Rail Program (FSP-National), Railroad Rehabilitation and Improvement Financing (RRIF), or other applicable USDOT programs. FRA recognizes that the domestic manufacturing ecosystem for high-speed rail will require investment and HSR project sponsors may plan to seek a waiver for certain goods, products, and materials used in safety- and performance-critical HSR technology systems (e.g., track, power supply, train control, rolling stock). Typically, project sponsors wait until after their project has been selected for award before requesting potential Buy America waivers. However, the complexity and size of HSR projects necessitates aligning any waiver and associated implementation plan with application evaluation processes. In the FSP-National NOFO, FRA indicated that if an applicant to that program anticipates it may need a waiver, the applicant should indicate the need in its application and submit materials necessary for such requests with its application. FRA has followed a similar approach with certain RRIF applicants such that Buy America waivers have been considered early in the loan application process. This notice provides clarification on what materials should be submitted to support parallel review of a grant application and waiver request.

FRA's "Buy America: Answers to Frequently Asked Questions" (FAQs) describe FRA's procedures for applying Buy America, including issuing waivers, to programs such as FSP-National and RRIF (<https://railroads.dot.gov/legislation-regulations/buy->

¹ Buy America requirements include both FRA Buy America requirements and Buy America, Build America requirements.

america/buy-america-fras-high-speed-intercity-passenger-rail-program). On January 25, 2021, President Biden signed Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers, to ensure that federal financial assistance awards maximize the use of goods, products, and materials produced in the United States. On April 18, 2022, the Office of Management and Budget issued Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure (M-22-11). This guidance states that to the greatest extent possible, waivers should be issued at the project level and be product specific. Also, the guidance encourages agencies to use the principles of time-limited, targeted, and conditional for any necessary waivers so that federal financial assistance drives increasing demand for production of domestically manufactured goods and products. In accordance with the Build America, Buy America Act, Executive Order, OMB Guidance, and FRA's FAQs, FRA will expect potential applicants to FRA- and USDOT-funded financial assistance programs to:

- Comply with Build America, Buy America Act and FRA Buy America requirements, including final assembly in the United States and appropriate domestic content thresholds.
- Maximize the use of domestically produced goods, products, and materials. Where domestically produced goods, products, and materials are not currently available in sufficient quantities or of an acceptable quality to meet demand, applicants are expected to provide robust evidence of non-availability or unreasonable cost.
- Prepare and implement a domestic sourcing plan for their HSR projects. The plan should describe how recipients will maximize the use of available domestic content, or, if such content does not currently exist, how they will work with suppliers to build production capacity and the plan should provide justification

regarding the use of the imported goods, products, and materials. If a waiver is needed, the applicant should describe the associated implementation plan and expected timeline to reach full FRA Buy America and BABA compliance. The plan may include—

- Detail on the extent to which HSR system goods, products, and materials are not available in the United States; the extent to which the goods, products, and materials for the HSR project can be sourced domestically; and the justification for imported items supported by robust evidence and analysis of industry supply relative to project demand.
- An explanation of how the recipient anticipates meeting full FRA Buy America and BABA compliance.
- An explanation of how the recipient anticipates using domestic sources for maintenance and replacement of initially imported goods and materials used in the project and/or how the recipient will scale domestic content over time by supporting new or expanded domestic production of initially imported goods and materials.
- An explanation of how the applicant, and, if applicable, its domestic suppliers, plan to support the creation of high-quality American jobs consistent with Good Jobs Principles. The Department intends to use the HSR program to support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and training and placement programs consistent with Executive Order 14025, Worker Organizing and Empowerment (86 FR 22829), and Executive Order 14052, Implementation of the Infrastructure Investment and Jobs Act (86 FR 64335). These provisions will be considered in conjunction with domestic sourcing plans so that, when taken together, the

domestic sourcing and workforce plans present a commitment to create high-quality jobs for the communities in which the project will operate.

FRA acknowledges that domestic sourcing plans may contain material the submitter considers to be confidential commercial information or trade secrets (collectively, CCI), and not customarily released to the public. Project sponsors should indicate as such domestic sourcing plans they consider to be CCI and not customarily released to the public, and request that the information be protected from release. To the extent permitted by law, FRA will not release such information. FRA will handle subsequent Freedom of Information Act, 5 U.S.C. 552, requests for the information according to the regulatory process described at 49 CFR part 7.

Industry Day

High speed rail manufacturing, assembly, installation, and maintenance all have the potential to not only support policies on sustainability and climate, but also to create good-paying, union jobs in the United States. DOT is interested in hearing from the public, including stakeholders (such as State and local agencies, the rail manufacturing industry, component suppliers, labor unions, related associations, and transportation advocates), to gather information on manufacturing and assembly processes in the United States for high-speed rail.

Issued in Washington, DC.



Amitabha Bose,

Administrator.