



U.S. Department
of Transportation

**Federal Railroad
Administration**

Deputy Administrator

1200 New Jersey Avenue, SE
Washington, DC 20590

SEP 29 2017

Mr. Richard L. Kelly
Engineering Services Director
City of Raleigh
One Exchange Plaza
219 Fayetteville St., Ste. 801
Raleigh, NC 27601

Re: Request for Waiver of Buy America Requirement

Dear Mr. Kelly:

On September 23, 2016, Code Electric, Inc. requested a waiver from the Federal Railroad Administration's (FRA) Buy America requirement (49 U.S.C. § 24405(a)) to use certain components of a fire alarm system, which cannot be sourced in the United States, in the Raleigh Union Station project (Project). The Project is for construction of a passenger train station in downtown Raleigh that will replace the existing Amtrak station. The City of Raleigh (City), through its contractor, awarded Code Electric, Inc. the electrical construction sub-contract for the Project. The \$90 million Project is funded in part by two Transportation Infrastructure Generating Economic Recovery grants of \$26.5 million from Fiscal Year (FY) 2012 and \$11.5 million from FY 2013 to the City, and \$15 million from a \$520 million American Recovery and Reinvestment Act of 2009 grant to the North Carolina Department of Transportation. FRA is providing its decision on the waiver to the City as the FRA grant recipient for this Project.

The Project is subject to 49 U.S.C. § 24405(a)(1), which requires that the steel, iron, and manufactured goods used in a project to be produced in the United States. FRA may waive the Buy America requirements if FRA finds that: (1) applying the requirements would be inconsistent with the public interest; (2) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amounts or are not of a satisfactory quality; (3) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (4) including domestic material will increase the cost of the overall project by more than 25 percent.

For the reasons stated in this letter, FRA grants a "non-availability" Buy America waiver. This waiver applies only to this Project.

Code Electric, Inc. seeks a waiver for the following components for use in the Project:

| Description | Quantity | Description | Quantity |
|-----------------------------------|-----------------|--------------------------------|-----------------|
| Addressable Pull Station | 15 | Addressable Module Flush Cover | 22 |
| Duct Sensor Housing | 6 | Overvoltage Suppressor | 1 |
| Remote Test Station | 6 | Relay IAM | 13 |
| Sampling Tube 73", Plastic | 6 | Addressable Module Flush Cover | 13 |
| Relay IAM | 6 | Relay Id NET 2 IAM W/T Sense | 1 |
| Addressable Module Flush Cover | 6 | 10 AH Battery | 2 |
| Indoor/Outdoor Surface Back Box | 8 | Address Module Isolator | 10 |
| Speaker Low Profile Ceiling Mount | 9 | Addressable Module Flush Cover | 10 |
| Supervised IAM | 22 | 50 AH Battery | 4 |
| IAM Bracket | 22 | Laptop | 1 |

The total cost of the fire alarm system is less than \$30,000, and the total cost of the non-U.S. manufactured components is less than \$10,000.

Code Electric, Inc. asserts the following facts in support of the waiver request:

- Code Electric, Inc. received several bids for the fire alarm system from suppliers Honeywell, Tyco Simplex Grinnell, and Edwards (United Technologies). Although these suppliers source many fire alarm system components from U.S. manufacturers, none of the suppliers offered a one hundred percent Buy America-compliant system. All fire alarm system suppliers use a mix of foreign and U.S.-made components; and
- The foreign components used by suppliers vary. However, due to programming, interoperability, and certification issues, the components are not interchangeable among systems. Therefore, suppliers cannot swap components to meet the FRA Buy America requirement.

FRA independently verified these assertions with its Monitoring and Technical Assistance Contractor (MTAC), TranSystems. An electrical engineer from FRA's MTAC explained that large international suppliers source or manufacture pieces of the fire alarm system in different countries. Further, many portions of the system are addressable (individually programmable), which means the software and hardware must be compatible and tested. In addition, fire alarm components and systems are UL® listed. UL® is a third-party, independent company that certifies safety compliance of many systems and their components, including fire alarm systems. Attempting to swap pieces of a fire alarm system would jeopardize its UL® listing and could cause product warranty and liability issues.

FRA concludes a waiver is appropriate under 49 U.S.C. § 24405(a)(2)(B) for the components because domestically-produced components are not currently "produced in sufficient and reasonably available amounts" (49 U.S.C. § 24405(a)(2)(B)). FRA bases this determination on the following:

Mr. Richard L. Kelly

Page 3

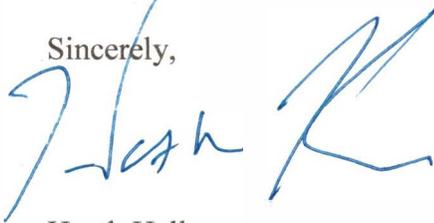
- For competitively bid, commercial products for buildings, such as fire alarm systems, FRA views receiving no Buy America-compliant bids as presumptive evidence the conditions exist to grant a non-availability waiver;
- On October 28, 2016, FRA provided public notice of this waiver request and a 15-day opportunity for comment on its website. FRA also emailed notice to over 6,000 recipients that requested Buy America notices through "GovDelivery." FRA received one comment. However, the commenter did not provide any information about a domestic source for a fully Buy America-compliant fire alarm system; and
- FRA's MTAC concurred with Code Electric, Inc. that due to programming, interoperability, and certification issues, components are not interchangeable among systems. Therefore, fire alarm system suppliers cannot swap components to meet the FRA Buy America requirement.

This waiver applies only to this Project for these specific components.

Under 49 U.S.C. § 24405(a)(4), FRA will publish this letter granting the Buy America waiver to the City in the *Federal Register* and provide notice of such finding and an opportunity for public comment after which this waiver will become effective.

If you have any questions, please contact John Johnson, Attorney-Advisor, at John.Johnson@dot.gov or (202) 493-0078.

Sincerely,



Heath Hall
Acting Administrator

cc: Code Electric, Inc.