

Exhibit B

BUY AMERICA REQUIREMENTS

FRA Buy America Requirements – Overview

This RFP is subject to FRA's "Buy America" statute at 49 U.S.C. § 24405(a) and applicable FRA guidance (see FRA Buy America Frequently Asked Questions at: <http://www.fra.dot.gov/Page/P0391>). 49 U.S.C. § 24405(a) allows the U.S. Secretary of Transportation to obligate funds for "a project only if the steel, iron, and manufactured goods used in the project are produced in the United States." FRA has stated that what constitutes FRA Buy America compliant rolling stock is rolling stock that have undergone final assembly in the U.S. from components that are manufactured in the U.S. Tier III High Speed Rail Trainsets (Trainsets) are included in the FRA definition of rolling stock. FRA has compiled a comprehensive list of items that it considers components of the Trainsets. This list can be found on the Amtrak/Authority HSR Trainset Buy America Component List and Amtrak/Authority HSR Prototype Trainset Buy America Component List ("Component Worksheets").

The Buy America requirements of this RFP are comprised of three parts:

Part I – Buy America Certification and Waiver Processes: Offeror must complete the Component Worksheets, along with the appropriate completed and signed certificates (Form(s) BA1 and either Form BA2 or Form BA3) to indicate that, with the exception of the prototype Trainsets (if a prototype waiver is granted), the proposed Trainsets will undergo final assembly in the U.S. from components that will be manufactured in the U.S. or that a waiver(s) will be required and sufficient documentation to process the waiver(s) is submitted with that Certificate of Non-Compliance (Form BA3).

Part II – Buy America Domestic Content Evaluation and Improvement Plan: This RFP will utilize "Domestic Content" among its evaluation criteria, which is determined by 1) giving points and 2) requiring that Offerors submit a plan to increase the domestic content of the Trainsets over the life of the contract(s) (see Exhibit A-Evaluation Process).

Part III – Buy America Pre-Award, Ongoing, and Post-Delivery Audits: The Buy America process for this procurement will include preaward and post-delivery audits. The Owners (i.e. Amtrak and the Authority) and/or their representative(s) will also provide ongoing oversight of the Recommended Awardee's Buy America compliance during the Trainsets' design and manufacture.

While FRA uses some Federal Transit Administration (FTA) Buy America precedent as guidance for FRA grantees, the FTA Buy America requirements do not apply to this RFP. Most significantly, FRA's Buy America statute does not contain an exception allowing for a waiver from the Buy America requirements, "when ... the cost of components and subcomponents produced in the U.S. is more than 60 percent of the cost of all components of the rolling stock; and ... final assembly of the rolling stock has occurred in the U.S."

Buy America documentation (to be included as part of the Technical Proposal submission (see Instruction to Offerors)) includes:

1. Completed and signed Buy America Certificate of Compliance or Non-Compliance (Form BA2 or Form BA3);
2. Completed Component Worksheets;
3. Completed and signed Buy America Component Supplier Certification Forms (Form(s) BA1), one for each supplier; and
4. Any Buy America Waiver Requests and Justifications (see below for detailed requirements regarding application for waivers).

FRA Buy America Definitions

The following definitions apply to all Buy America requirements in this RFP:

Component means any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location.

A *component* is considered to be manufactured in the U.S. if there are sufficient activities taking place in the U.S. to advance the value or improve the condition of the subcomponents of that component; that is, if the subcomponents have been substantially transformed or merged into a new and functionally different article. All components relevant for this RFP are listed in the Component Worksheets, irrespective of a Trainset manufacturer or supplier's individual manufacturing process, component or subcomponent part name or title, and/or interpretation of or definition of "component", "manufacturing", or other included relevant process or definition.

End product means any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at a U.S. assembly location, that is acquired for public use under a federally-funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s).

Final assembly is the creation of the end product (the new trainset) from individual elements brought together for that purpose through application of manufacturing processes. If a system is being procured as the end product by the grantee, the installation of the system qualifies as final assembly.

Manufacturing Process/ Manufacturing means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

Rolling stock means transit, passenger and freight rail vehicles such as buses, vans, cars, railcars, locomotive, Trainsets, trolley cars and buses, as well as vehicles used for support services.

Subcomponent means any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component in the manufacturing process and that is incorporated directly into a component as a result of the application of a manufacturing process.

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Waiver in Common is a waiver that the FRA in its sole discretion may grant for a component that will apply to all Offerors whose proposals are under evaluation.

Activities constituting *Substantial Transformation of Subcomponents* to form a component include forming, extruding, material removal, welding, soldering, etching, plating, material deposition, pressing, permanent adhesive joining, shot blasting, brushing, grinding, lapping, finishing, vacuum impregnating, and, in electrical and electronic pneumatic, or mechanical products, the collection, interconnection, and testing of various elements. Mere assembly of the subcomponents does not constitute substantial transformation.

System means a machine, product, or device, or a combination of such equipment, consisting of individual components, whether separate or interconnected by piping, transmission devices, electrical cables or circuitry, or by other devices, which are intended to contribute together to a clearly defined function. Factors to consider in determining whether a system constitutes an end product include: Whether performance warranties apply to an integrated system (regardless of whether components are separately warrantied); whether products perform on an integrated basis with other products in a system, or are operated independently of associated products in the system; or whether transit agencies routinely procure a product separately (other than as replacement or spare parts)

Part I - Buy America Certification and Waiver Processes

The FRA Buy America requirement has two elements:

With the exception of the prototype Trainsets (if a prototype waiver is granted), final assembly of the Trainsets must occur in the United States (no waivers will be granted to this requirement), and

100 percent of the components (see list of components in the Component Worksheets) must be manufactured in the U.S. (waivers may be granted for this requirement).

However, a Proposal, if requested, will be deemed compliant with the Buy America Certification (Form BA2 or Form BA3) requirements in this RFP if:

With the exception of the prototype Trainsets (if a prototype waiver is granted), final assembly of the Trainsets will occur in the U.S. and EITHER:

100 percent of the Trainset components will be manufactured in the U.S. and the Offeror submits a Certificate of Compliance (Form BA2) and a form documenting the U.S. location of each components' manufacture (Form(s) BA1); OR

100 percent of the Trainset components cannot be manufactured in the U.S. and the Offeror submits a Certificate of Noncompliance (Form BA3) and a form, documenting the components that will be manufactured in the U.S. (Form(s) BA1) and for components that cannot be manufactured in the U.S. submits documentation sufficient to process and support a waiver from FRA's Buy America requirement (see 49 U.S.C. § 24405(a) (2)).

All certifications are subject to audits.

FRA Buy America Certification Requirements

Each Offeror shall submit the appropriate Buy America Certification (Form BA2 or Form BA3) and completed Component Worksheets with the Technical Proposal. Technical Proposals not accompanied by properly completed Buy America Certifications and the Component Worksheets will be rejected as nonresponsive.

Forms BA2 and BA3 are mutually exclusive. Offerors shall sign and submit either Form BA2 or BA3, but not both. Signing and submitting both Forms BA2 and BA3 will render the Proposal nonresponsive. Making a knowing and willful false certification is a criminal act in violation of 18 U.S.C. §1001.

The Offeror is bound by the certification(s) submitted with its Proposal and is not permitted to change its certification(s) after submission of the Proposal unless the requirements of 49 U.S.C. § 24405(a)(9) are met.

Where the Offeror certifies in its Proposal that it will comply with the applicable Buy America requirements and later determines that it cannot, the Offeror shall not be eligible for a waiver of those requirements, unless FRA determines that circumstances completely beyond the Offeror's control exist making compliance impossible (e.g., where the intended supplier for a particular component goes out of business and no other supplier exists). No price adjustments will be allowed under these circumstances.

Offeror certifications and requests to correct certifications are subject to FRA/Owner audit, and the Offeror/Contractor and its suppliers agree in submitting a proposal to supply a component or in the Proposal to supply the Trainsets to provide all required information to support any such audit(s).

FRA Non-Compliance Certification and Waiver Process

With the exception of the prototype Trainsets (if a prototype waiver is granted), final assembly of the Trainsets must occur in the U.S. No waiver of this requirement will be granted and a Proposal containing such a request for waiver will be rejected as nonresponsive.

A waiver, whether in common or individual, from the FRA Buy America provision regarding the requirement that 100 percent of components must be of U.S. origin may be granted if the FRA determines one of the following to be true:

- (1) Applying the requirement would be inconsistent with the public interest;
- (2) The required component(s) are not produced in the U.S. in a sufficient and reasonably available amount or are not of a satisfactory quality;
- (3) Including the required component(s) would cause the rolling stock or power train equipment to not be bought and delivered in the U.S. within a reasonable time; and/or
- (4) Including the domestic component(s) will increase the cost of the overall project by more than 25 percent.

(See 49 U.S.C. § 24405(a)(2)).

Final Assembly Requirement and Prototype Waiver Process

Final assembly of the Trainsets must occur in the U.S. However, for the purposes of this procurement ONLY, FRA will consider a waiver of the final assembly requirement for up to two (2) prototype Trainsets each for Amtrak and the Authority. To ensure that the service-proven safety performance of the Trainsets is not compromised, a foreign manufacturer(s) selected by Amtrak and the Authority may be permitted to assemble the prototypes outside of the U.S., while simultaneously taking the steps necessary to localize manufacturing and train American workers as serial production begins. The process for securing a waiver for non-U.S. assembly of prototype Trainsets is as follows:

(1) Amtrak and Authority will submit a Buy America waiver request to FRA to allow the selected bidder(s) to assemble outside of the U.S. up to two prototypes each for Amtrak and Authority (Prototype Waiver Request). The Prototype Waiver Request will contain the type of information required in all FRA Buy America waiver requests (see FAQ #15 at <http://www.fra.dot.gov/Page/P0391#faq15>) and shall:

- a. Clearly identify the nexus between the waiver requested and the beneficial impact on the public;
- b. Explain the need for a Buy America waiver for final assembly in the country of origin, focusing on factors such as safety and the introduction of significant new technology and the ability to train American personnel side by side with home factory personnel, and;
- c. Detail the realities of the industry and the practical and economic necessity of foreign assembly of the Trainset prototypes in this circumstance.

(2) Upon receipt of the Prototype Waiver Request, FRA will begin its formal review and post the request on its public website and in the Federal Register.

For the purposes of proposal preparation, Offerors may assume that the Buy America domestic final assembly requirement will be waived for up to four (4) prototype Trainsets (two each for Amtrak and the Authority). The domestic final assembly waiver for prototypes is contingent upon its timely submission by Amtrak and the Authority, and its review and approval by FRA. Notwithstanding this, the prototype Trainsets will contain 100% U.S. domestic component content unless component waivers have been granted.

Component Waiver Process

The FRA may grant general waivers. This is not the same as “Waivers in Common” described in more detail below, but instead, would be a waiver granted to all FRA grantees across all FRA grants for a particular manufactured product(s). As of January 2014, FRA has no such general waivers in place nor does it intend to grant any such waivers. However, if during the time this solicitation is open FRA does grant such a waiver, the FRA will inform the project Owners, and the Owners will make this information available to the Offerors in an RFP Amendment. Except where a general waiver has been granted, the Offeror shall submit, as part of its Proposal, any waiver request(s) together with its Certificate of Non-Compliance (Form BA3).

At minimum and where applicable, the Offeror’s waiver request shall include the following information for each component:

- (1) Identification and description of the Trainsets proposed under this project;

- (2) Description of the component not meeting the FRA Buy America requirement;
- (3) Description of the process used to find U.S. suppliers of component(s) for which a waiver is being requested;
- (4) Description of a process demonstrating a commitment to finding and/or developing U.S. suppliers in future procurements;
- (5) Cost differential(s) to secure domestic component(s) as compared with nondomestic component(s);
- (6) Issues with quality or quantity of compliant component(s);
- (7) Issues with timely delivery of compliant component(s);
- (8) Citation to the specific 49 U.S.C. § 24405(a)(2) waiver category(ies) under which the waiver is sought; and
- (9) Justification supporting the application of the waiver category(ies) cited to the extent not already answered by the above.

The Offeror must provide clear justification for each separate component for which a waiver is being requested. After Technical Proposals are received, the project Owners will provide the FRA with waiver requests, if any, submitted by Offerors without identifying the Offeror that submitted the request.

The FRA will review the waiver documentation provided by the Owners. The FRA in consultation with the Owners will identify any deficiencies with the waiver request(s). Waiver documentation review by the FRA does not guarantee the waiver request will be granted; instead its purpose is only to determine that sufficient information has or has not been submitted and to make a determination. If request deficiencies are identified, the deficiencies may be discussed with the Offerors during one on one interviews, which shall be held only in the event they are determined by the Owners to be needed.

Based on the information received in the Technical Proposals rendered in response to this RFP, Amtrak and the Authority may request Waivers in Common from FRA for particular component(s) which appear in the Component Worksheets. Waivers in Common will be considered by FRA for a component or components based upon a petition from Amtrak/Authority for such waiver(s). The Amtrak/Authority petition in turn will be based upon those waivers identified in Technical Proposals as being needed and related supporting information. FRA is required to receive public comment on decisions to grant waivers; therefore, in order to maintain the confidentiality of Offerors, information identifying the particular Offeror will not be included in the Amtrak/Authority petition to FRA for Waivers in Common—though the waiver request in its entirety will be provided to FRA in redacted form. If granted, such Waiver(s) in Common would apply to those Offerors whose proposals remain under consideration.

Once the Owners have selected a Recommended Awardee, the Owners will provide all of the Offerors' entire waiver request(s), including the identifying information of the Offerors, to FRA.

Contract award can be made only to Offerors that have certified Buy America compliance (either by certification that, with the exception of the prototype Trainsets (if a prototype waiver is

granted), the Offeror can meet assembly and 100 percent component requirements or by certification that, with the exception of the prototype Trainsets (if a prototype waiver is granted), the Offeror can meet assembly requirements but not the 100 percent component requirements and the Offeror has submitted a complete waiver request(s)). Contract award will not occur before the FRA has reached a final decision on any Waivers in Common.

After award, the selected Contractor may request (at the Contractor's risk) additional individual waivers directly from FRA, using FRA's standard Buy America waiver process.

Offeror certifications, waiver request(s) and justifications are subject to FRA/Owner audit, and the Offeror/Contractor and its suppliers agree in submitting a proposal to supply a component or in the Proposal to supply the Trainsets to provide all required information to support any such audit(s).

Part II - Buy America Domestic Content Evaluation and Improvement Plan

To support and encourage domestic manufacturing of the offered Trainsets and their components, this RFP will utilize among its proposal evaluation criteria (consistent with applicable procurement practices and FRA guidance) the amount of domestically manufactured components as a measure of the Domestic Content of the offered Trainsets. In addition, to encourage further exploration of increasing domestic content beyond the component level, a Domestic Content Improvement Plan is required. The Domestic Content criterion consists of two elements:

A: Initial Domestic Content: The Offeror must submit in its Proposal Exhibit B, documenting all Trainset components offered in the Proposal identifying for each component if it will be manufactured in the United States. The domestic content will be determined by the total weighted rating of the components identified as being manufactured domestically. This Initial Domestic Content applies for the Base Order only.

If, post-award and as a consequence of the FRA's rejection of a waiver request or of findings during the Buy America pre-award audit, the score for "Domestic Content" of the Recommended Awardee would change, this will not result in a re-evaluation of the "Domestic Content" criterion (see further description under Buy America Pre-Award, Ongoing, and Post-Delivery Audits) for the Recommended Awardee or any other Offeror. However, other consequences would follow any finding of intentional misrepresentation. See 49 U.S.C. § 24405(a)(9). Depending upon the nature of the findings, these consequences could include cancellation of the contract or subcontract for the particular goods.

B: Domestic Content Improvement Plan: The Offeror must take actions to explore the further development of a domestic supply base for Trainset content via a Domestic Content Improvement Plan (DCIP). To satisfy the requirement for DCIP, the Offeror is required to submit a plan to increase the number of U.S.-made components (if waivers were requested) and subcomponents (whether or not waivers were requested) to fill the base order and future orders, if any. The DCIP shall be submitted with the Technical Proposal. Offerors are bound by the assertions made in the DCIP submitted with their Proposals.

At a minimum, the plan shall:

(1) If a waiver(s) has been requested, identify whether and how the Offeror will obtain that component(s) domestically for all future Option Orders;

- (2) Describe current Proposed Trainset content at component and subcomponent levels, including percentages of content by cost, if known;
- (3) Identify components or subcomponents that may already be U.S. produced due to Offeror's previous or ongoing efforts to increase U.S. content (at component and subcomponent levels);
- (4) Describe a plan for working with suppliers to increase the domestic content (at component and subcomponent levels);
- (5) Identify what foreign suppliers will be that are subject to replacement by domestic suppliers;
- (6) Assess how Offeror/Contractor will deal with Intellectual Property and safety certification(s) and/or licensing matters;
- (7) Include a capital investment plan that shows how a domestic supply base will be created; and
- (8) Include a credible time-frame showing change from a foreign supplier(s) to a domestic supplier(s).

The DCIP is also subject to audit by the Amtrak/Authority or the FRA.

Offerors are encouraged to use the services of the National Institute of Standards and Technology (NIST) Manufacturing Extension Ownership (MEP) or equivalent supplier scouting service to assist them in making or implementing their DCIP. See <http://www.nist.gov/mep/>.

Part III - Buy America Pre-Award, Ongoing, and Post-Delivery Audits

The Buy America process for this procurement will include pre-award and post-delivery audits. In addition, throughout design and manufacture of the Trainsets, the Owners or their representative(s) will provide ongoing oversight of selected Offeror's Buy America compliance.

The Recommended Awardee/Contractor must agree (and get agreement from its suppliers and/or proposed suppliers) to provide to the Owners or their representatives all relevant documents, including Buy America certifications, waiver requests and justifications, bills of lading or other shipping documents, and any other documents verifying the final assembly location and origin of manufacture for included components. The Recommended Awardee/Contractor must also agree (and get agreement from its suppliers and/or proposed suppliers) to give access to manufacturing plants and assembly locations to allow the Owners or their representatives to complete audits. Information obtained during all audits will be kept confidential to the extent allowed by Federal and State laws.

Pre-award Audit: The pre-award audit will be conducted before the Owners enter into a formal contract with the Recommended Awardee. The pre-award audit will include an inspection of the facility where final assembly is to occur, an inspection of documentation provided by the Recommended Awardee detailing the assembly activities that will occur at this facility, procurement documentation, and an inspection of all Buy America Certification Forms and Supplemental Documents provided by suppliers for all included components as listed in Exhibit B and site visits to selected component manufacturing plants to verify the assertions made in those certifications. All Buy America Certification Forms submitted by component suppliers shall be signed and dated by the responsible official having knowledge of the origin of manufacture

for the particular component(s). Unsigned forms will be rejected. The duration of the pre-award Buy America audit is approximately 15 to 20 business days. The pre-award audit will take place during the period following Notice of Award and prior to Contract Award.

Post-delivery Audit: The post-delivery audit of the first serial production of the Trainsets will be completed by the Owners and/or their representatives before the final acceptance by the Owners. Amtrak/Authority will not accept Trainsets if the post-delivery audit cannot be completed to verify the Contractor's compliance with the Buy America requirements regarding