

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration**

[Docket No. FRA–2023–0099]

Notice of Proposed Nonavailability Waiver of Buy America Requirements for the Nevada Department of Transportation To Purchase Certain High-Speed Rail Components

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

ACTION: Notice; request for comment.

SUMMARY: The Federal Railroad Administration (FRA) is seeking comments on whether to grant a waiver of its Buy America requirements to the Nevada Department of Transportation (NVDOT) for certain components that are not produced in the United States for use in a high-speed passenger train project between Las Vegas, NV and Rancho Cucamonga, CA (Project). FRA selected the Project for funding under the Federal-State Partnership for Intercity Passenger Rail Program (FSP Program), and therefore, FRA's Buy America requirements apply to the Project. FRA's Buy America requirements include both FRA's statutory requirements, which require 100 percent of the manufactured products and steel and iron used in an FRA-funded project to be produced in the United States, and the Build America, Buy America Act (BABA), which requires that all construction materials used in the FRA-funded project be produced in the United States. FRA is not proposing to waive the applicable BABA requirements for construction materials used in the Project, and therefore this proposed waiver would not apply to the construction materials used in the Project. The proposed waiver would apply to the trainset, signal systems, high-speed rail turnout and fire alarm systems based on the domestic nonavailability of such components, as identified by NVDOT's railroad operating partner Brightline West and the two potential suppliers (Alstom and Siemens) of the rolling stock and signaling systems for the project. NVDOT and Brightline estimate that over 95 percent of the total direct dollar expenditures for the Project would be spent on domestically sourced products and labor, including 100 percent of the civil infrastructure costs.

DATES: Comments must be received by January 25, 2024.

ADDRESSES: Please submit all comments electronically to the Federal

eRulemaking Portal. Go to <https://www.regulations.gov> and follow the instructions for submitting comments.

Instructions: All submissions must refer to the Federal Railroad Administration and the docket number in this notice (FRA–2023–0099). Note that all submissions received, including any personal information provided, will be posted without change and will be available to the public on <https://www.regulations.gov>. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Ryan Arbuckle, Chief, Program Coordination and Strategy, Office of Railroad Development, FRA, telephone: (202) 617–0212, email: Ryan.Arbuckle@dot.gov. For legal questions, please contact Faris Mohammed, Attorney-Advisor, Office of the Chief Counsel, FRA, telephone: (202) 763–3230, email: Faris.Mohammed@dot.gov.

SUPPLEMENTARY INFORMATION:**I. Project History and Background**

On December 7, 2022, FRA published a Notice of Funding Opportunity (NOFO) announcing application requirements and procedures to obtain grant funding under the FSP Program for projects not located on the Northeast Corridor for Fiscal Year 2022. The FSP Program provides a Federal funding opportunity to improve passenger rail service, including privately operated intercity passenger rail service if an eligible applicant is involved. On February 3, 2023, FRA published a notice adding funding and extending the application period for the FSP Program NOFO. On March 22, 2023, FRA published a notice (March Notice) inviting high-speed rail project sponsors to voluntarily submit, in advance of being selected to receive FRA funding, their domestic sourcing and workforce plans (DSWP) to demonstrate how they will maximize the use of domestic goods, products and materials, consistent with FRA's Buy America requirements.¹

NVDOT submitted an application for FSP Program funding expressing its intent to partner with Brightline West, a privately-owned railroad, to advance a high-speed passenger rail system between Las Vegas, NV and Rancho Cucamonga, CA (Project). Brightline West, under the supervision and

¹ Advancing High-Speed Rail Projects Intended for Operations Over 160 Miles Per Hour Through Domestic Sourcing Plans and Buy America Compliance, 88 FR 17289 (March 22, 2023).

oversight of NVDOT, would construct the Project, which would consist of a fully-grade separated high-speed train system largely within the I–15 right-of-way with stations in Rancho Cucamonga, Hesperia, and Victor Valley, CA, and Las Vegas, NV. Brightline West would then operate and maintain the system.

Consistent with FRA's March Notice, NVDOT and Brightline West submitted a DSWP,² which included a request for a waiver of FRA's Buy America requirements³ for certain components of the high-speed rail system that the applicant indicated are not produced in the United States. FRA reviewed the DSWP, including the market research conducted by Brightline West and their consideration of qualifying alternate items, products, or materials. FRA selected the Project to receive \$3,000,000,000 in funding under the FSP Program.

This notice summarizes FRA's Buy America requirements, NVDOT and Brightline West's request for a waiver, and FRA's proposed waiver decision.

II. FRA's Buy America Requirements and Policy

Projects that receive funding under the FSP Program are subject to FRA's Buy America requirements. FRA's Buy America requirements include both: (i) FRA's statutory requirements for steel, iron, and manufactured goods at 49 U.S.C. 22905(a); and (ii) requirements under the Build America, Buy America Act (BABA) and guidance at 2 CFR 184.6 for construction materials. This means that FRA can fund a project only if the steel, iron, and manufactured goods used in the project are produced in the United States. 49 U.S.C. 22905(a). In addition, FRA-funded projects must also comply with the relevant provisions of BABA, including the requirement that all construction materials used in the project must also be produced in the United States. Public Law 117–58, 70914(a); 2 CFR 184.6.

FRA strictly enforces compliance with its Buy America requirements to ensure that FRA-funded projects maximize the use of materials produced in the United States. FRA expects grantees to work with suppliers to conduct thorough market research and adequately consider, where appropriate, qualifying alternate items, products, or materials.

² The DSWP contains proprietary information that FRA has determined is confidential business information. As such, FRA is not making the DSWP available to the public at this time; however, pertinent non-proprietary information provided in the DSWP is discussed in this notice.

³ For FRA's Buy America requirements, see section II.

Compliance with FRA's Buy America requirement supports domestic industry and well-paying jobs.

III. FRA's Authority To Waive Buy America Requirements

There are limited circumstances in which FRA can waive its Buy America requirements under section 22905(a) and BABA. FRA will grant a waiver request that is consistent with the statutory criteria for a waiver and where a project sponsor has adequately justified the need for a waiver.

FRA may waive its Buy America requirements if FRA determines that: applying the Buy America requirements would be inconsistent with the public interest; 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; rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or including domestic material will increase the cost of the overall project by more than 25 percent. 49 U.S.C. 22905(a)(2); *see also* Public Law 117–58, 70914(b)(prescribing similar statutory conditions for waivers); and 2 CFR 184.7 (doing the same).

If FRA determines a waiver is appropriate, FRA will provide notice and seek comment from the public in accordance with the requirements of both section 22905(a) and BABA, if applicable. In addition, FRA will consult with the National Institute of Standards and Technology's Manufacturing Extension Partnership before granting a waiver, consistent with section 70916 of BABA. Unless otherwise specified, waiver decisions are non-precedential and are only applicable to the entities and components for the specific project identified in the final decision.

IV. Summary of the Request for Waiver

In response to FRA's March Notice, NVDOT and Brightline West submitted a DSWP outlining the efforts Brightline West would take to ensure maximum use of available domestic materials in the project if NVDOT's application is selected for funding under the FSP Program. In the DSWP, NVDOT and Brightline West explain that certain components intended to be used on the project are not produced in the United States and thus request a waiver of FRA's Buy America requirements under section 22905(a) for these components. No construction materials covered under BABA are included in the waiver request.

V. Summary of Components Requiring Waiver

Brightline West sought to identify a domestic supplier for the rolling stock and signal system components of the Project. Brightline West received two responses to its Request for Interest, from Siemens and Alstom, who represented they could provide high-speed rail components that meet Brightline West's specifications and applicable FRA safety requirements. However, both suppliers certified that certain non-domestic components would be required to meet the specifications, as those types of high-speed rail equipment are not produced in the United States. Brightline West consulted with each potential supplier so that their lists of non-domestic components would include only those components for which there is no available domestic option.

Brightline West received responses from both Siemens and Alstom for the signal systems and both responses indicated a need for a waiver for certain components. Brightline West selected Siemens as the preferred vendor for the signal systems for the Project, and therefore the proposed waiver only describes the non-domestic components in Siemens' proposal.

For rolling stock, both Alstom and Siemens indicated that certain components that perform safety critical functions for the operation of the high-speed rail system would not be compliant with FRA's Buy America requirements. At the time of this proposed waiver, Brightline West has not selected its preferred vendor for rolling stock. The non-domestic components identified by Brightline West that would require a waiver from FRA's Buy America requirements are described in this section.⁴

a. Siemens Proposal—Non-Domestic Rolling Stock Components

Siemens is proposing to introduce the next generation Velaro NOVO Electric-Multiple-Unit (EMU) for the Project. As this would be the first introduction of this technology into the United States, Siemens would plan for the first two trainsets to be manufactured and assembled in its German headquarters with American workers present to witness and learn in advance of commencing the manufacturing and assembly of the remaining eight

⁴ The non-domestic component lists may vary among suppliers depending on the specific manufacturing processes used and system design. In highly specialized systems, such as high-speed rail trainsets, components cannot be easily substituted without potential impacts to performance and safety.

trainsets at a new factory, which would be constructed in Nevada. Under the Siemens proposal, the following components would not be produced in the United States:

- First Two Complete Trainsets
- Car Shells for All 10 Trainsets (shell structure, frame, vehicle paintwork)

b. Alstom Proposal—Non-Domestic Rolling Stock Components

Alstom is proposing to adapt the Avelia technology planned for deployment on the NEC for use in the Project by increasing power capacity and traction to achieve the speed and performance capability required by Brightline West, and consistent with that achieved with its TGV trains in Europe. Manufacturing would take place at its existing facility in Hornell, New York, where all 10 trainsets would be built. For this procurement, the following components would not be produced in the United States:

- Car Shells (shell structure, frame, vehicle paintwork)
- Brake Control Units

c. Non-Domestic Infrastructure Components

Brightline West notes that the Project would also require the use of specialty high-speed rail turnouts to allow trains to smoothly diverge to a passing siding, which plays a key role in safety and stability of train operations. In addition, the Project would require fire alarm panels and devices for use in stations, garages, and maintenance facilities. Brightline West has researched known suppliers and was not able to identify a domestic manufacturer for the following components:

- Eurobalises and Euroloops⁵
- Counting Heads and Axle Counter Sensors
- Truck Press (test stand)
- Turnout Systems including Derailers
- Fire Alarm Systems

VI. Applicant's Request for Waiver

In their request for a waiver, NVDOT and Brightline West indicated that they believe a waiver is justified because no manufacturers exist in the United States that can produce the components described above, and that the use of these non-domestic components is necessary to ensure the safety and reliability of the high-speed rail system.

⁵ Eurobalise and euroloops are components installed between the rails of a railway that are part of the European train control system used by Siemens. These components store infrastructure data (e.g., position reference, speed limits, line gradient, works on the line, etc) and can send this information to the train.

NVDOT's and Brightline West's DSWP further explains that over 95 percent of the total direct dollar expenditures for the Project would be spent on domestically sourced products and labor, including 100 percent of the civil infrastructure costs. In addition, the Project is expected to support approximately 35,000 domestic jobs across the construction period and includes a project labor agreement (PLA). The operator has reached an agreement with rail labor which may result in ongoing operations and maintenance work being performed by union labor.⁶ The DSWP further explains efforts Brightline West would take to facilitate, where feasible, a ramp up in domestic production capabilities for the materials that are not currently produced in the United States on future high-speed rail projects in the United States.

In the absence of a waiver, NVDOT and Brightline West argue that the Project could not be delivered within the planned schedule and budget because there is no domestic supplier for the components listed above. To ensure safety of the system, Brightline West expects to conform with FRA's Passenger Equipment Safety Standards governing Tier III equipment,⁷ which allows for service-proven high-speed rail technologies from around the world (in this case Europe) to be introduced to the United States with minimal modification.

For example, the high-speed rolling stock aluminum car shells are critical to the achievement of high speeds, due to aluminum's strength and light weight, and it has taken decades of development in technology by highly specialized experts that can shape, mold, and weld these car shells to the required safety and quality standards, including crashworthiness. There is currently no available aluminum car shell manufacturer in the United States, and it would take years to establish a domestic, quality-controlled manufacturing capability. The relatively small size of the Project's order (ten trainsets) is also not considered by the applicant to be sufficient to justify the significant capital investments required to initiate development of domestic production capacity for those products.

In its request for a waiver, NVDOT and Brightline West explain how they conducted due diligence and performed thorough market research to adequately

consider qualifying alternate items, products, or materials. Brightline West engaged with both Alstom and Siemens to determine the systems that could be manufactured domestically. These efforts included considering options for the establishment of either temporary or permanent manufacturing facilities, alternative manufacturing processes, and system design. In addition, Brightline West conducted market research to identify a domestic supplier for high-speed turnout and fire alarm components. However, Brightline West was unable to identify a domestic supplier for the rolling stock, signal systems, turnout, and fire alarm components.

VII. Proposed Waiver

Based on its review of the waiver request and DSWP, FRA proposes to waive its Buy America requirements for the following components for the Project:

- The infrastructure components listed above in Section V(c); and the rolling stock components listed in either:
 - Section V(a), if Siemens is selected as the preferred supplier; or
 - Section V(b), if Alstom is selected as the preferred supplier.

The proposed waiver would apply only to components listed above for use in the Project, as described in the grant agreement between FRA and NVDOT. FRA is not proposing to waive any requirements under BABA, as the proposed waiver does not apply to any construction materials used in the Project. The proposed waiver would not apply to other FRA grantees or to other grants that might be made to NVDOT or Brightline West for other projects (including any future phases related to the Project).

VIII. Request for Comment

FRA will consider comments received during the comment period, consistent with BABA and 2 CFR 184.7. FRA may consider comments received after this period to the extent practicable. Consistent with 49 U.S.C. 22905(a)(4), if FRA determines it is necessary to waive its Buy America requirements, FRA will publish its decision in the **Federal Register** and provide an opportunity for public comment on such finding for a reasonable period of time not to exceed 15 days. After such period, FRA's decision will be effective.

Issued in Washington, DC.

Amitabha Bose,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2023-0002-N-36]

Proposed Agency Information Collection Activities; Comment Request

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

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) summarized below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before February 9, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on regulations.gov to the docket, Docket No. FRA-2023-0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130-0533) in any correspondence submitted. FRA will summarize comments received in a subsequent 30-day notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: arlette.mussington@dot.gov or telephone: (571) 609-1285, or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: joanne.swafford@dot.gov or telephone: (757) 897-9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501-3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the

⁶ In March 2023, thirteen rail unions representing more than 160,000 workers signed a Memorandum of Understanding with Brightline West, establishing a commitment for the use of highly skilled union labor required to operate and maintain the System.

⁷ See 49 CFR part 238.