



December 5, 2023

Ms. Kelley Brookins, Regional Administrator
Federal Transit Administration, Region V
200 West Adams Street, Suite 320
Chicago, IL 60606

Ref: Buy America Waiver Justification and Certification for DTC RFP 1-19-2023 (Turnout switch components)

Dear Ms. Brookins,

Per the Federal Transit Administration (“FTA”) Detroit Transportation Corporation (“DTC”) Buy America waiver response letter dated September 8th, 2023, below is supplemental waiver justification and certification that good faith effort was made during solicitation of DTC Request for Proposal (“RFP”) 1-19-2023. DTC seeks a waiver to proceed DTC Contract No. 05202023 (“Project”) subpackage 7 with the Delta Railroad Construction, Inc. (“Delta”) to furnish and replace in-kind specialty turnout switch components to maintain the DTC’s Elevated Guideway in a State-of-Good Repair.

Waiver Justification:

This Project is funded, in part, with FTA grant MI-2021-031 (approved and pending) and will exceed \$150,000. The solicitation required the proposer to acknowledge that FTA terms and conditions are incorporated into the contract. The solicitation also included a requirement to comply with all applicable federal laws and regulations, including the Buy America provisions found at 49 U.S.C. 5323(j). Further, the solicitation required the proposer to provide an appropriate Buy America certification. DTC received a Certificate of Non-Compliance from Delta for the special trackwork (See Exhibit A, Delta Form C-1 Buy America Certificate of Non-Compliance). For additional information on the public solicitation process for RFP 1-19-2023 please refer to the Request for Buy America Waiver for DTC RFP 1-19-2023 submitted to the FTA on July 14th, 2023.

The Project is divided into seven (7) subpackages. Subpackages 1 through 6 included replacement of curve worn rail and associated Other Track Material (OTM) and subpackage 7 included special track and LIM support. Subpackages 1 through 6 are Buy America compliant. The furnished special trackwork components associated with subpackage 7 are the only non-compliant Buy America items due to nonavailability.

The total Project value is \$4,985,708.00 with \$214,530.00 of associated costs to furnish the non-compliant Buy America special trackwork components. The to be furnished non-compliant Buy America special trackwork components will replace in-kind worn components of the switch that provides train routing between the main line and the Maintenance Control Facility (“Switch”). The Project is designed to provide at least twenty (20) years of trouble-free operation after completion. All materials for the Project other than the Switch special trackwork components are compliant with Buy America Part 661.

The existing Switch was installed as original equipment under the Urban Transit Development Company ("UTDC") contract when the system was originally constructed in 1987. The Switch was originally procured from Germany (Krupp Stahl AG¹) and is designed to European Standards using AREMA 115RE rail throughout the turnout with a special 60E1A1 (formerly Zu-160) switch point section. The frog design is movable point, but at this time, the frog will not be replaced. The turnout is supported by direct fixation type plate/pan fasteners with an insert resilient (rubber) pan.

The European design and proprietary nature of the equipment means that alternative proposers would need to familiarize themselves with the European standards, design, construction, and installation procedures to provide a competitive overhaul solution. The proper operation of the Switch is essential for the continued, safe operations of the DTC's Detroit People Mover ("DPM") vehicles.

The Switch component in-kind replacement involves the replacement of steel and iron end products under Appendix A to 49 CFR 661.3(2). Under 49 CFR 661.5, steel and iron products must be produced in the United States and its components must be of United States origin.

Since all proposals received included the Buy America Certificate of Non-Compliance for the Switch materials, DTC desires a waiver to procure the Switch based on 49 CFR 611.7(c)(1), which allows a waiver for circumstances when the materials requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. This regulatory subsection provides a presumption that the nonavailability exists when no responsive and responsible bid is received offering an item produced in the United States.

Based on the procurement process followed by DTC and the lack of alternative bids certifying compliance with Buy America for the Switch, the materials requested are not produced in the United States in sufficient and reasonable amounts and DTC respectfully requests the FTA Administrator to provide a waiver of Part 661.5 based on Part 661.7(c)(1) for the Switch component in-kind replacement, which will allow for the continued operation of the DTC's DPM vehicles.

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¹ Krupp Stahl AG has since merged into operations of ThyssenKrupp GfT Gleistechnik GmbH, which is part of ThyssenKrupp AG.

Summary

DTC can certify that a good faith effort was conducted by using a competitive procurement process to help ensure Buy America compliance and documentation that certain materials are not available in sufficient and reasonable quantities or quality have been received. For additional information on the public solicitation process for RFP 1-19-2023 please refer to the Request for Buy America Waiver for DTC RFP 1-19-2023 submitted to the FTA on July 14th, 2023. The lack of Buy America compliant bids and due to the European design and proprietary nature of the DTC's DPM transit system, in-kind replacement components for the Switch are not available.

An FTA Administrator waiver of the Part 661.5 Buy America provisions for the special trackwork components for the Switch component in-kind replacement as a part of the Project is reasonable and necessary to the safe and reliable operation of DTC's DPM transit system.

Itemized responses to the FTA DTC Buy America waiver response letter dated September 8th, 2023, have been provided. (See Exhibit B, Itemized responses to FTA DTC Buy America waiver response letter dated September 8th, 2023)

Respectfully Submitted,

Detroit Transportation Corporation

DocuSigned by:

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Robert Cramer, General Manager

Enclosures: Exhibits

Exhibit	Title	Source	Pgs.
A	Delta Form C-1 Buy America Certificate of Non-Compliance	Delta Technical Proposal	144-145
B	Itemized responses to FTA DTC Buy America waiver response letter dated September 8 th , 2023	Independent	NA

Exhibit A

Delta Form C-1 Buy America Certificate of Non-Compliance



DTC OCP
RFP NO. 1-19-23

FORM C-1

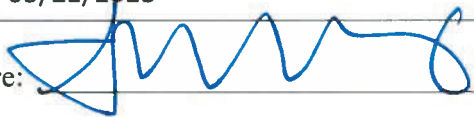
File Number: _____
Project Title: Rail Replacement Project

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH 49 USC 5323(j)(1)

The bidder hereby certifies that it will comply with the requirements of 49 USC 5323(j)(1) and the regulations in 49 CFR Part 661.

EXCLUDING SPECIAL TRACKWORK

Date: 03/22/2023

Signature: 

Company Name: Delta Railroad Services

Title: Linda Laurello, COO

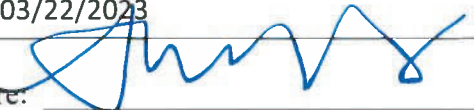
DO NOT COMPLETE UNLESS PRODUCT OFFERED DOES NOT MEET THE BUY AMERICA REQUIREMENTS

BUY AMERICA CERTIFICATE FOR NON-COMPLIANCE WITH 49 USC 5323(j)(1)

The bidder hereby certifies that it cannot comply with the requirements of 49 USC 5323(j) (1), but may qualify for an exception to the requirement pursuant to 49 USC 5323(j) (2) (B) or (j) (2) (D) and regulations in 49 CFR Part 661.7.

SPECIAL TRACKWORK ONLY

Date: 03/22/2023

Signature: 

Company Name: Delta Railroad Services

Title: Linda Laurello, COO

Exhibit B

Itemized responses to FTA DTC Buy America waiver response letter dated
September 8th, 2023.

FTA		Buy America Waiver Request for DTC RFP 1-19-2023 (Turnout Switch Components)	
Job Name: Detroit Transportation Corporation (DTC) RFP No. 1-19-23 (Contract Number 05202023) - Rail Replacement Project: Replacement of specified sections of worn rail (curve and tangent) and the replacement and reinstallation of anchor bolts and special track turnout components Submitted By: DTC Date: 7/14/2023 Reviewed By: FTA Date: 9/8/2023 Response By: DTC Date: 12/5/2023			
ITEM NO.	COMMENTS	RESPONSES	
1	Waiver type (nonavailability, unreasonable cost, or public interest)	Nonavailability	
2	Recipient name and Unique Entity Identified (UEI)	Recipient Name: Detroit Transportation Corporation, a Michigan public body corporation, with its principle place of business at 535 Griswold, Suite 400, Detroit, MI 48226. Recipient Unique Entity Identifier: VJ3NAJSP1DE3	
3	Federal awarding agency organization information (e.g., Common Governmentwide Accounting Classification (CGAC) Agency Code)	Federal Transit Administration (FTA), CGAC Agency Code 069	
4	Financial assistance listing name and number	Detroit People Mover Section 5307 and 5337 Improvements	
5	Federal financial assistance program name	Section 5307: Urbanized Area Formula Grants Section 5337: State of Good Repair	
6	Federal Award Identification Number (FAIN) (if available)	FY2023: MI-2021-031-01 and FY2024: MI-2021-031-02	
7	Federal financial assistance funding amount	\$10,698,498 (Federal \$8,558,798.40 and Non-federal \$2,139,699.60) through FY2023	
8	Total cost of infrastructure expenditures, including all Federal and non-Federal funds (to the extent known)	Contract Number 05202023 total value is \$4,985,708.00 (Federal \$3,988,566.40 and Non-federal \$997,141.60)	
9	Infrastructure project description and location (to the extent known)	This federally funded project will replace specified sections of worn rail (curve and tangent) along the DTC-owned Detroit People Mover (DPM) elevated automated public transit systems along with replacement and reinstallation of anchor bolts and turnout switch components located in Detroit, MI.	
10	List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, including name, cost, country(ies) of origin (if known), and relevant PSC and NAICS code for each.	List of iron or steel items excepted Buy America: 1. One pair of EN60E1A1 switch point rails with 115RE rail extensions and adjacent undercut 115RE stock rails consisting of a right-hand switch point rail and undercut stock rail; a left-hand switch point rail and undercut stock rail; and all appurtenances associated with these components' installation. 2. Four transition head machined rails for connection to frog and turnout rails 3. One set of switch point rods consisting of two drive rods and two detector rods.	Contract pay item value for Furnishing of Special Trackwork Components: \$214,530.00
11	A certification that the Federal official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.	Refer to Request for Buy America Waiver for DTC RFP 1-19-2023 submitted to the FTA on July 14th, 2023 and Buy America Waiver Justification and Certification for DTC RFP 1-19-2023 (Turnout switch components) dated December 5th, 2023.	
12	A statement of waiver justification, including a description of effort made (e.g., market research, industry outreach), by the Federal awarding agency and, in the case of a project or award specific waiver, by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.	Refer to Request for Buy America Waiver for DTC RFP 1-19-2023 submitted to the FTA on July 14th, 2023 and Buy America Waiver Justification and Certification for DTC RFP 1-19-2023 (Turnout switch components) dated December 5th, 2023.	
13	Anticipated impact if no waiver is issued	Short term: If no waiver is issued that existing turnout switch components would remain in place and in service. The existing condition of the turnout switch components proposed to be replaced as part of this project is degrading reducing system reliability and increasing maintenance effort and cost. As the existing turnout switch components remain in service the probability of a critical finding being discovered increases. If a critical finding can not be addressed the turnout would have to be taken out of service impacting the overall system efficiency. Long term: If no waiver is issued DTC would have to fully replace the turnout and ancillary components. A full turnout replacement would have significant operational, logistical and financial implications for DTC and the end user. Due to the DPM Automated Train Control (ATC) signaling system and the track structure being directly fixed to the elevated guideway direct and indirect impacts and costs are likely significant.	
14	Any relevant comments received through the public comment period.	Due to the nature of the project (in-kind track infrastructure component replacement to maintain existing service levels), project location, and limited impacts to the surrounding environment and public, no public comment period was needed.	