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Federal Transit Administration
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Dear Counsel,

The Coalition for a Prosperous America (CPA) is formally requesting a Buy America Pre-Award Desk Review of the Chicago Transit Authority's (CTA's) \$1.3 billion contract with China's state-owned enterprise CSR Sifang to build 846 commuter railcars.

Procedural History

For over one year, CPA has diligently attempted to assess whether this project is in compliance with the Buy America Act of 1982 (Section 165 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. § 5323(j)). On April 6, 2018, CPA FOIA'd the CTA requesting a number of documents. On May 10, 2018, CTA responded with a heavily redacted pre-award audit report. On September 5, 2018, the Illinois Attorney General's (AG's) Office agreed to adjudicate our contest of numerous redactions. On October 16, 2018, CSR Sifang and CTA submitted a brief in support of their redactions. On October 24, 2018, CPA submitted a reply brief (see Exhibit A). Under 5 ILCS 140, the Illinois Attorney General's Office had 60 days to issue a binding opinion. According to Edie Steinberg, Assistant Attorney General in the Public Access Bureau, any forthcoming opinion on this FOIA contest will be purely advisory.

Separately, CPA wrote to the Office of Chief Counsel of FTA on September 21, 2018 requesting a guidance letter pertaining to improper redactions by municipal authorities involving alleged "confidentiality" of the percentage of domestic content of a project's supplier (See Exhibit B). There is no statutory or regulatory prohibitions on such disclosure, and Section 4.5 of FTA's Best Practices Handbook explicitly states this information is not confidential. On December 4, 2018, FTA responded to CPA's federal FOIA of these documents that contained the much of the same redactions, though not as many as CTA.

Despite being improperly denied information that is legally within the public domain on a federally-funded project, CPA believes there is sufficient public policy reasons and factual evidence to warrant a Buy America Act investigation.

The Trump Administration Has Already Declared A Security Threat from CRRC

CRRC is China's state-owned railway company, and CSR Sifang is a

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nominally American subsidiary wholly controlled by CRRC. On March 22, 2018, the Office of the United States Trade Representative (USTR) issued its Findings of the Investigation Into China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974 (301 report). This report stated Chinese state-owned enterprises unreasonably burden or restrict U.S. commerce to advance China's industrial policy objectives. These actors have different motives than simply maximizing profits. Rather, their investments often serve strategic state goals.

Modern railway transport equipment is part of the Made in China 2025 industrial program, which was characterized as a threat to the United States in USTR's 301 report. On May 29, 2018, President Trump ordered USTR to impose 25 percent import duties on 22 product lines of commuter railway equipment to address this threat.

Following the leadership from USTR, the United States Congress recently voted to bar the Federal Transit Administration (FTA) from funding transit projects involving CRRC. On June 12, 2018, the House Appropriations Committee reported H.R. 6072 to the full House of Representatives. Included in this legislation is Section 165, which bans the FTA from using federal money to give to an entity:

"...[O]wned, directed, or subsidized by a country identified as a priority watch list country by the United States Trade Representative in the most recent report required under Section 182 of the Trade Act of 1974 (19 U.S.C. 2242) and is subject to monitoring by the Trade Representative under Section 306 of the Trade Act of 1974 (19 U.S.C. 2416)."

On July 30, 2018, the United States Senate agreed by voice vote to include Senate Amendment 3670 as modified into H.R. 6147 (see pages S5502-S5503 of Congressional Record). Senate Amendment 3670 was virtually the same as the language in H.R. 6072, but included a form of a grandfather clause that prevented any existing contracts from getting further federal funds. It also barred FTA from funding projects from the government of a country that "(1) is identified as a nonmarket economy country (as defined in Section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18))) as of the date of enactment of this act." On August 1, H.R. 6147 passed the United States Senate on a 92-6 vote (see Senate vote no. 180). On March 15, 2019, Senators Cornyn, Baldwin, Crapo and Brown introduced legislation that would accomplish what the appropriations bills intended.

This Project Has Numerous Red Flags Warranting An Investigation

On Page 12 of the Pre-Award Buy America Audit Report, dated February 17, 2016, the auditor Parsons Brinckerhoff concluded that this project was 69.47% domestic.

On December 4, 2015, President Obama signed the Fixing America's Surface Transportation (FAST) Act. Included was language that increased the percentage of domestic content gradually from 60% in FY 2016 to 70% in FY 2020 under 49 U.S.C. Section 5323(j), the Buy America Act of 1982. As of October 1, 2019 the project must be 70 percent domestic. By CTA's own estimates, this project is not in compliance. According to Steve Policar, who does Pre-Award Buy America Audit Reports professionally, responsible auditors will only approve a project with a 10 percentage point buffer to avoid risk of non-compliance.

Parsons Brinckerhoff conducted its Pre-Award audit from February 2-4, 2016 in Qingdao, China. Accordingly, the auditor did not visit a single US production site to verify domestic content. The auditor conducted an investigation into Buy America Act compliance solely in China.

Moreover, the company allegedly contracted to conduct the heating system, RTR Technologies, Inc., filed for Chapter 7 bankruptcy in April, 2017 and ceased operations. Neither CTA or CSR Sifang identified what domestic company is going to do the heating system now that RTR is defunct. This indicates the 69.47% domestic content figure is a ceiling and not a floor.

Anecdotally, when the first round of bidding on this project occurred, Nippon Sharyo of Japan conducted supplier fairs and contacted virtually every trade association associated with the domestic manufacturing supply chain. In order to ensure domestic components on a project of this size, any serious bidder would have to blanket the supply chain with RFP's. In both rounds of bidding, CSR Sifang conducted no such outreach.

We thank you for your attention to this matter, and stand ready to assist FTA in this audit. If you have any questions, please feel free to contact Michael Stumo at 413.717.0184 or cpa@prosperousamerica.org.

Sincerely,



Daniel DiMicco, Chairman



Michael Stumo, CEO

cc: Dr. Peter Navarro, Assistant to the President and Director of the Office of Trade and Manufacturing Policy