



U.S. Department
of Transportation

**Federal Transit
Administration**

Deputy Administrator

1200 New Jersey Avenue, SE
Washington, DC 20590

Mr. Paul J. Wiedefeld
General Manager
Washington Metropolitan Area Transit Authority
600 5th Street, NW
Washington, DC 20001

Dear Mr. Wiedefeld:

The Federal Transit Administration (FTA) is aware that the Washington Metropolitan Area Transit Authority (WMATA) currently is nearing completion of a procurement for 8000 Series railcars, and plans to use only non-Federal funds for the contract. This letter is to remind WMATA of restrictions that Section 7613 of the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020)¹ places on the award of rail rolling stock contracts, even when only non-Federal funds are used. Given the considerable Federal funds that are apportioned to WMATA every year, I also want to encourage WMATA to include as a requirement of this procurement that responsive bidders must comply with FTA's Buy America requirements for rolling stock.

The NDAA 2020 added new subsection 49 U.S.C. § 5323(u) to Federal public transportation law. Section 5323(u)(1) generally prohibits FTA funding of procurements of rolling stock from any manufacturer that is "owned or controlled by, is a subsidiary of, or is otherwise related legally or financially to a corporation based in" certain foreign countries. A country is covered by the restriction if, *inter alia*, it "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 [December 20, 2019]." For this criterion, FTA recipients should consult the U.S. International Trade Administration's list of designated nonmarket economy countries, available at <https://www.trade.gov/nme-countries-list>. This list currently includes the People's Republic of China. Accordingly, CRRC Corporation Limited (CRRC) is a manufacturer that is covered by this prohibition on the use of FTA funding for rolling stock procurements.

Section 5323(u), however, also imposes restrictions on the use of only non-Federal funds for the procurement of rail rolling stock from CRRC. As a condition of receiving funds under FTA's State of Good Repair program (49 U.S.C. § 5337) in any fiscal year, Section 5323(u)(4) requires an operator of rail fixed guideway service such as WMATA to certify in that fiscal year that it "will not award any contract or subcontract for the procurement of rail rolling stock for use in public transportation with a [restricted manufacturer]." This certification requirement is not limited to procurements occurring under an FTA award; it also applies to procurements funded entirely with non-Federal funds. See Q7 of FTA's Frequently Asked Questions Regarding Section 7613 of the National Defense Authorization Act for Fiscal Year 2020 at

¹ Pub. L. No. 116-92 (Dec. 20, 2019).

Mr. Paul Wiedefeld

Page 2

<https://www.transit.dot.gov/funding/procurement/frequently-asked-questions-regarding-section-7613-national-defense>.

Congress made this certification requirement applicable to WMATA immediately upon enactment of the NDAA 2020. 49 U.S.C. § 5323(u)(5)(C). WMATA submitted the required certification to FTA for FY 2020. If WMATA awards the 8000 Series railcar contract to CRRC, it will not be eligible to receive FTA State of Good Repair program funds in the fiscal year of that contract award. In FY 2020, WMATA was apportioned \$144,846,268 in State of Good Repair funds.

This procurement also is an opportunity to support the Nation's economic recovery from the COVID-19 public health emergency, given that WMATA will procure over 250 railcars, with an option to buy up to 800 vehicles. Given the significant level of annual Federal financial support of WMATA, and the considerable benefit to American workers when FTA Buy America requirements apply, I strongly encourage WMATA to require bidders to comply with FTA's Buy America requirements, regardless of the source of funding, for this particular procurement. In light of the importance of WMATA's services to the Federal workforce and to transportation in our National Capital Region, we believe it is especially appropriate for WMATA to ensure that such a significant procurement of railcars will fully comport with and advance the Buy America policies adopted by Congress for federally supported transit procurements. In the event WMATA's procurement of 8000 series railcars does not accord with FTA's Buy America standards, we will consider whether there are measures available or needed to ensure that WMATA complies with Buy America in the future.

If you have any questions regarding this letter, please do not hesitate to contact me.

Sincerely,



K. Jane Williams
Deputy Administrator

cc: Patricia Lee, WMATA General Counsel