



U.S. Department  
Of Transportation  
**Federal Transit  
Administration**

Chief Counsel

1200 New Jersey Avenue S.E.  
Washington DC 20590

SEP - 7 2010

Paula J. Alexander, Esq.  
General Counsel  
Metropolitan Transit Authority  
1900 Main  
P.O. Box 61429  
Houston, TX 77208-1429

*Subject: Decision Letter—Buy America & Procurement Investigation*

Dear Ms. Alexander:

In accordance with the authority to “have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made,”<sup>1</sup> and the investigation procedures of 49 C.F.R. § 661.15, this letter, along with the enclosed Report of Investigation, comprises the decision of the Federal Transit Administration (FTA) in the above-captioned Investigation.

FTA initiated the investigation on April 23, 2010, after learning that the Metropolitan Transit Authority of Harris County (Houston METRO or METRO) entered into a contract with Construcciones y Auxiliar de Ferrocarriles (CAF) to produce two pilot Light Rail Vehicles (LRVs) in Spain. CAF intended to use the pilot LRVs as guides for producing at least 103 LRVs for three federally funded projects. The amount of Federal funding METRO expected to use for the LRVs was approximately \$205 million. FTA Buy America rules prohibit the purchase of LRVs that are produced outside of the United States, thus, FTA was concerned that the separate contract for the pilot LRVs may have been a violation of FTA’s Buy America requirements.

Although FTA started the investigation based solely on concerns about METRO’s compliance with the Buy America requirements, the investigation soon grew to include concerns about METRO’s LRV procurement. FTA expanded the scope after receiving a letter from LRV manufacturer Alstom Transportation, Inc. (Alstom) on June 1, 2010, in which Alstom identified irregularities with METRO’s procurement process. FTA staff confirmed these irregularities as it reviewed documents provided by METRO.

As you know, FTA’s investigation procedures placed the burden on Houston METRO to demonstrate compliance with Federal rules. To this end, over the course of several months and through several formal and informal requests, FTA asked METRO for

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<sup>1</sup> 49 U.S.C. § 5325(g).

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written answers and copies of any and all communications and documents relating to the investigation. METRO cooperated with FTA's requests, but its responses were sporadic and incomplete at times. Ultimately, METRO provided FTA with approximately 14.2 Gigabytes of information, including hundreds of documents and thousands of e-mail messages relating to the LRV procurement, and an Affidavit signed by METRO's Acting General Manager George Greanias affirming that METRO had, in fact, sent FTA a full and complete record.

After a thorough review of the information provided to FTA by Houston METRO, and for the reasons summarized below and described in the enclosed Report of Investigation, I have found substantial violations of FTA's procurement and Buy America rules.

FTA's investigation found the following violations of FTA's Buy America requirements:

- METRO told offerors that Buy America did not apply to its LRV procurement;
- METRO rated CAF's proposal as complying with Buy America despite CAF's stated intent to produce pilot LRVs in Spain; and
- METRO and CAF entered into a subsequent, sole-source contract for the express purpose of producing pilot LRVs in Spain.

In addition to finding the Buy America violations listed above, FTA learned that METRO also failed to follow Federal procurement rules requiring full and open competition:

- METRO negotiated with one offeror, CAF, to the exclusion of all others;
- METRO misled manufacturers competing against CAF by stating that it was "still in the evaluation state" and would inform them "when the evaluation was completed" even though it had instructed its Facility Provider to enter into a contract with CAF;
- METRO allowed CAF to continue revising its price while refusing to allow other offerors the opportunity to present their best and final prices;
- METRO did not follow the procurement processes outlined in FTA guidance and in METRO's own Procurement Manual;
- METRO withheld evaluation criteria and information regarding the weight of evaluation criteria from the offerors; and
- METRO did not perform a valid best value analysis before selecting CAF.

The enclosed Report of Investigation, incorporated herein by reference, set forth a complete description of FTA's investigation procedures and a detailed analysis of the violations committed by Houston METRO.

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It bears emphasis that METRO committed these violations despite receiving at least five written warnings from FTA about the importance of following Buy America and Procurement rules when procuring LRVs for federally funded projects. The following is a summary of various correspondences between FTA and METRO that included such warnings:

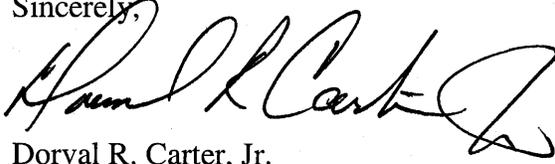
- December 2007: FTA informed METRO that, “FTA cannot financially participate in vehicle procurements, nor can such procurements be eligible for federal reimbursement under a potential FFGA . . . when the procurement departs from Federal procurement rules, including Buy America.”
- February 2008: FTA told METRO that, “all projects funded by FTA are subject to Buy America . . . [and] to the extent that the scope of work under an FFGA [Full Funding Grant Agreement] for either the North or Southeast Corridor projects would include LRVs . . . Houston METRO would have to comply with Buy America and all other applicable Federal cross-cutting requirements.”
- March 2008: FTA outlined several issues that could affect the progress of METRO’s North and Southeast Corridor projects and explained, specifically, that METRO’s LRV procurement must comply with the Buy America requirements.
- April 2008: FTA approved METRO’s plan for “cure[ing] deficiencies in the original RFP (Request for Proposals) by issuing an addendum informing suppliers that this procurement will be subject to all Federal procurement requirements, including but not limited to Buy America.”
- March 2009: FTA denied METRO’s request for a Buy America waiver for the two pilot LRVs, stating that, “any grant of a Buy America waiver after CAF has certified compliance would prejudice other manufacturers that submitted offers or proposals to METRO.”

As a consequence for failing to heed these warnings and for violating Federal Buy America and procurement rules, the Chairman of METRO’s Board of Directors and METRO’s Acting General Manager will soon receive a letter from FTA Administrator Peter M. Rogoff outlining the actions METRO must take to bring its LRV procurement into compliance with FTA’s rules. The failure to properly correct these violations will result in a withdrawal of \$64 million in Federal funding through the American Recovery and Reinvestment Act of 2009, and the ineligibility for Full Funding Grant Agreements for the North and Southeast Corridor projects.

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If you have questions about this decision, feel free to contact Jayme L. Blakesley at [jayme.blakesley@dot.gov](mailto:jayme.blakesley@dot.gov) or (202) 366-0304.

Sincerely,

A handwritten signature in black ink, appearing to read "Dorval R. Carter, Jr.", written in a cursive style.

Dorval R. Carter, Jr.  
Chief Counsel