

Finally, under 49 U.S.C. 5323(j)(6), FTA cannot deny an application for a waiver based on non-availability unless FTA can certify that (i) the steel, iron, or manufactured good (the “item”) is produced in the United States in a sufficient and reasonably available amount; and (ii) the item produced in the United States is of a satisfactory quality. Additionally, FTA must provide a list of known manufacturers in the United States from which the item can be obtained. FTA is not aware of any manufacturers who produce the Replacement Parts in the United States.

The 12 DMUs purchased by NCTD were granted a waiver from Buy America. NCTD’s efforts to identify domestic manufacturers for the various Replacement Parts were unsuccessful. FTA proposes to grant NCTD a non-availability waiver of the Buy America requirements for the Replacement Parts for the 12 DMUs which will be acquired for the replacement of the components over several phases from 2018 through 2026. Any non-availability waiver granted would be effective for all phases of these projects and will include Replacement Parts acquired to maintain the DMUs for their 25-year useful life.

The purpose of this notice is to publish NCTD’s request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. After consideration of the comments, FTA will publish a second notice in the **Federal Register** with a response to comments and noting any changes made to the proposed waiver as a result of the comments received.

Ellen Partridge,  
Chief Counsel.

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA–2016–0035]

#### Notice of Proposed Buy America Public Interest Waiver for Hurricane Sandy Emergency Relief Work Performed for the World Trade Center

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Proposed Buy America waiver and request for comment.

**SUMMARY:** The Federal Transit Administration (FTA) received a request

from the Port Authority of New York and New Jersey (PANYNJ) for a Buy America public interest waiver for the procurement of equipment to replace what was damaged at the World Trade Center Transportation Hub (WTC Hub) project during Hurricane Sandy. PANYNJ seeks a public interest Buy America waiver for the replacement of equipment previously purchased for the WTC Hub. Hurricane Sandy damaged an existing construction site that receives federal funds but is not subject to FTA’s Buy America requirements and the only option PANYNJ had to implement Sandy recovery work was to replace the damaged equipment with the same equipment previously acquired for the project. 49 U.S.C. 5323(j)(2)(A) and 49 CFR 661.7(b). In accordance with 49 U.S.C. 5323(j)(3)(A), FTA is providing notice of the public interest waiver request and seeks public comment before deciding whether to grant the request. If granted, the waiver would only apply to replacement of equipment damaged by Hurricane Sandy at the WTC Hub project and would not apply to any other PANYNJ resiliency projects for which FTA has provided funding.

**DATES:** Comments must be received by November 14, 2016. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2016–0035.

1. *Web site:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site.

2. *Fax:* (202) 493–2251.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must make reference to the “Federal Transit Administration” and include docket number FTA–2016–0035. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or

by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT’s complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Cecelia Comito, FTA Assistant Chief Counsel, (202) 366–2217 or [Cecelia.comito@dot.gov](mailto:Cecelia.comito@dot.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to provide notice and seek public comment on whether the FTA should grant a public interest waiver to the Port Authority of New York and New Jersey (PANYNJ) for the procurement of replacement equipment damaged by Hurricane Sandy at the World Trade Center Transportation Hub (WTC Hub) project.

With certain exceptions, FTA’s Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless “the steel, iron, and manufactured goods used in the project are produced in the United States.” 49 U.S.C. 5323(j)(1). If, however, FTA finds that the application of this requirement would be inconsistent with the public interest, it may waive this requirement. 49 U.S.C. 5323(j)(2)(A). In determining whether the conditions exist to grant a public interest waiver, FTA will consider all appropriate factors on a case-by-case basis, unless a general exception is specifically set out in this part. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(b).

On May 13, 2015, PANYNJ requested a Buy America waiver for the replacement or repair of equipment damaged by Hurricane Sandy at the WTC Hub because the WTC Hub project is being constructed pursuant to a grant awarded in 2003, it is not feasible to replace the damaged equipment with equipment that is different than that used in the original project and it is in the public’s interest to repair the damage at the WTC Hub as quickly as possible. 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(b). Additionally, the underlying project is not subject to FTA’s Buy America requirements.

The September 11, 2001 terrorist attacks on the World Trade Center resulted in extensive damage to the WTC Hub. In August 2002, the Federal Emergency Management Agency (FEMA) entered into a memorandum of agreement with the U.S. Department of Transportation under which FEMA agreed to provide \$2.75 billion to cover

expenses incurred in repairing or rebuilding public transportation facilities and systems damaged by the September 11, 2001 terrorist attacks. Under the agreement, FTA would serve as the lead agency to oversee the grant and the construction of the project. In December 2003, FTA entered into a grant agreement with PANYNJ to rebuild the WTC Hub. Because the WTC Hub project was funded with FEMA grant funds, FTA's Buy America requirements did not apply to the project.

In October 2012, the WTC Hub project was an active construction site, with an estimated project completion date of December 2015. Hurricane Sandy caused extensive damage to the construction site, resulting in more than \$214 million in damage to the construction site. FTA awarded PANYNJ two grants—NY-44-X005 for \$54.24 million and NY-44-X014 for \$159.72 million—in Hurricane Sandy recovery funds to be used for recovery and emergency repair work for the WTC Hub project. Because the repair work was for an ongoing construction project, PANYNJ was required to use existing contracts that were originally procured in accordance with the requirements for the FEMA-funded WTC Hub project. To apply FTA's Buy America requirements to replace or repair equipment installed on an ongoing construction project would result in significant delay to completion of the project, impact contracts awarded under the FEMA funds, and potentially impact previously provided warranties. Moreover, if granted, the public interest waiver would maintain overall consistency of administration, oversight and implementation of both the ongoing WTC Hub project and the WTC Hurricane Sandy recovery work.

Accordingly, because the original project was funded by FEMA and therefore, not subject to FTA's Buy America regulations, FTA proposes a general public interest waiver of FTA's Buy America requirements for the two grants, NY-44-X005 for \$54.24 million and NY-44-X014 for \$159.72 million—awarded to PANYNJ. This public interest waiver is limited to the Hurricane Sandy recovery projects at the WTC Hub only, and does not apply to separately funded resiliency projects. FTA seeks comment from all interested parties on the above public interest waiver. After consideration of the comments, FTA will publish a second notice in the **Federal Register** with a response to comments and noting any changes made to the public interest

waiver as a result of the comments received.

**Ellen Partridge,**  
*Chief Counsel.*

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**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**[Docket No. DOT-OST-2016-0206]**

**Advisory Committee on Transportation Equity**

**AGENCY:** Office of the Secretary, U.S. Department of Transportation (DOT).

**ACTION:** Notice of establishment of Advisory Committee on Transportation Equity (ACTE).

**SUMMARY:** Pursuant to Section 9(a)(2) of the Federal Advisory Committee Act (FACA), and in accordance with Title 41, Code of Federal Regulations, Section 102-3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the ACTE will be established for a 2-year period.

The Committee will provide advice and recommendations to the Secretary of Transportation on comprehensive, interdisciplinary issues related to transportation equity from a variety of stakeholders involved in transportation planning, design, research, policy, and advocacy. Specifically, the ACTE will inform the Department about efforts to (1) institutionalize the U.S. DOT Opportunity principles into Agency programs, policies, regulations, and activities; (2) strengthen and establish partnerships with other governmental agencies, including other Federal agencies and State, tribal, or local governments, regarding opportunity issues; (3) promote economic and related forms of opportunity by empowering communities to have a meaningful voice in local and regional transportation decisions; and (4) sharpen enforcement tools to ensure compliance with nondiscrimination programs, policies, regulations, and activities.

The U.S. DOT Opportunity principles are to:

- (1) Support transportation projects that connect people to economic and related forms of opportunity and revitalize communities;
- (2) Ensure that current and future transportation projects connect and strengthen communities; and
- (3) Develop transportation facilities that meaningfully reflect and

incorporate the input of all the people and communities they touch.

Additionally, the establishment of the ACTE is necessary for the Department to carry out its mission and in the public interest. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of that Act.

**FOR FURTHER INFORMATION CONTACT:**

Barbara McCann, U.S. Department of Transportation, Office of the Secretary, Office of Policy, Room W84-310, 1200 New Jersey Avenue SE., Washington, DC 20590; phone (202) 366-8016; email: [Equity@dot.gov](mailto:Equity@dot.gov).

**SUPPLEMENTARY INFORMATION:** The Secretary of Transportation will appoint up to 15 voting members to the ACTE. Members will be selected with a view toward achieving varied perspectives on transportation equity, including (1) academia; (2) community groups; (3) industry/business; (4) non-government organizations; (5) State and local governments; and (6) federally recognized tribal governments and indigenous groups. The Secretary of Transportation will seek a membership that is fairly balanced in terms of points of view of the affected interests.

The Advisory Committee on Transportation Equity's efforts will include evaluation of the Department's work in using the principles above to achieve Opportunity objectives when carrying out its strategic, research, technological, regulatory, community engagement, and economic policy activities related to transportation and opportunity.

The Committee shall act solely in an advisory capacity and will not exercise program management responsibilities. Decisions directly affecting implementation of transportation policy will remain with the Secretary.

Members of the Advisory Committee on Transportation Equity may be selected to serve either as representative members or as members appointed solely for their expertise. The latter will serve as special Government employees and will be subject to certain ethical restrictions, and such members will be required to submit certain information in connection with the appointment process.

Committee members may serve for a term of 2 years or less and may be reappointed for successive terms, with no more than 2 successive terms. The Chair and Vice Chair of the Committee will be appointed by the Under Secretary of Transportation for Policy from among the selected members, and the Committee is expected to meet