



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

Deputy Administrator

1200 New Jersey Avenue, SE  
Washington, DC 20590

DEC 16 2010

Ms. Marina Douglass  
Manager of Budget and Administration  
Northern New England Passenger Rail Authority  
75 West Commercial Street, Suite 104  
Portland, ME 04101-4631

**Re: Request for Waiver of Buy America Requirement**

Dear Ms. Douglass:

This letter is in response to your July 14, 2010, request that the Northern New England Passenger Rail Authority (NNEPRA) be granted a waiver from the Federal Railroad Administration's (FRA) Buy America provision, at 49 U.S.C. § 24405(a), to permit NNEPRA to purchase 3,340 foreign-made AREMA specified carbon steel standard 1-1/8 nominal diameter track nuts. Section 24405(a) authorizes the Secretary of Transportation to obligate certain grant funds only if the steel, iron, and manufactured goods used in the project are produced in the United States. The Secretary, or his delagatee, may waive the Buy America requirement provided that he or she finds that: (A) applying it would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amount or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (D) including domestic material will increase the cost of the overall project by more than 25 percent. 49 U.S.C. §§ 24405(a)(2)(A)-(D).

The NNEPRA asserts that the specific required track nuts are not produced in the United States in sufficient and reasonably available amounts and that, therefore, a waiver is warranted under 49 U.S.C. § 24405(a)(2)(B). For the following reasons, I am granting NNEPRA's request.

In January 2010, NNEPRA was awarded \$35 million in America Recovery and Reinvestment Act (ARRA) funds to extend Amtrak's Downeaster passenger service from its existing route of Boston, Massachusetts to Portland, Maine further north to station stops in Freeport and Brunswick, Maine. The track bolts and nuts needed to be delivered to the project in time for the planned start of continuous welded rail installation the week of August 16, 2010. Consequently, delivery within 30 days of the notice of award was a

requirement in the Invitation to Bid. The low bid for the nuts was \$0.63 each with a total cost of \$2,104.20, which includes shipping. The low bidder was able to meet the required delivery schedule. During the procurement process for these track bolts, all of the bid package holders asserted that while the track bolts were domestically produced, the standard square nuts no longer were and would have to be obtained from a foreign manufacturer.

In late June 2010, NNEPRA informally notified FRA staff that it could find no domestic source of 3,340 AREMA specified carbon steel standard 1-1/8 nominal diameter track nuts, which were needed for the project. At that time, FRA asked NNEPRA to expand the search for a domestic source, and suggested they contact the Railway Supply Institute (RSI) and/or other suppliers of track equipment. The NNEPRA contacted many of the major railroad track material suppliers, including Harmer Steel, LB Foster, A&K Railroad Materials, Unitrac Railroad Materials, Atlantic Track & Turnout, Vossloh, Progress Rail, and Railroad Tools & Solutions. They all confirmed that they could not supply domestically produced AREMA standard square nuts for track bolts. The NNEPRA also attempted to determine if it would be possible to have the nuts custom-manufactured in the United States. The NNEPRA contacted Rockford Bolts, a major domestic producer of AREMA standard track bolts, and were told they could not custom fabricate the standard square nuts. The NNEPRA also contacted Lewis Bolt & Nut, a major U.S. bolt manufacturer, and they stated they would not custom fabricate the standard square nuts and did not know of any other U.S. manufacturer who would. NNEPRA concluded that the track nuts were not reasonably available domestically. The FRA also independently contacted RSI. The RSI knew of no domestic source of the track nuts. At that time, FRA staff told NNEPRA that its only option was to file a formal waiver request.

If FRA determines that it is necessary to grant a waiver, it is required to (before the date on which the finding takes effect) “(A) publish in the Federal Register a detailed written justification as to why the waiver is needed; and (B) provide notice of such finding and an opportunity for public comment on such finding for a reasonable period of time not to exceed 15 days.” 49 U.S.C. § 24405(a)(4). Though not required to publish waiver requests before a decision whether to grant or deny has been made, FRA published notice of NNEPRA’s waiver request in the Federal Register on August 2, 2010 in order to invite public comment on whether there were or were not domestic sources of the required track nuts.

The FRA received five responses to its August 2, 2010 Public Notice, which are summarized here in no particular order.

- Allison Symmonds, representative for the Alliance for American Manufacturing requested that the waiver be denied, commenting that Dyson Corporation and Chicago Nut & Bolt could provide the specified track nuts.

- John A. Tolman, National Legislative Representative of the Brotherhood of Locomotive Engineers and Trainmen (BLET) and James A. Stern, Jr., National Legislative Director of the United Transportation Union (UTU) submitted a joint comment. The BLET and UTU reported that the tool and hardware supply company Grainger could supply the specified track nuts made in the United States. They requested denial of the waiver, or a design change if the design of the track bolt required foreign made nuts. The BLET and UTU expressed a desire to reserve Buy America exemptions for legitimate reasons and categorized the subject waiver as “trivial” and a “nuisance.”
- W. Dan Pickett, President of the Brotherhood of Railroad Signalmen (BRS), opposed the waiver. The BRS also commented that the 10-day comment period was inadequate to submit detailed comments, and broadly asserted that more than one million domestically produced track bolts and nuts meeting the stated specifications are in service or supplier inventory and expressed confidence that numerous domestic producers can offer the required nuts. The BRS did not indicate any specific domestic producer.
- Rick Inclima, Director of Safety for the Brotherhood of Maintenance of Way Employees Division (BMWED) of the Teamsters Rail Conference opposed the waiver as well as the 10 day comment period as inadequate. The BMWED asserted that more than one million domestically produced track bolts and nuts meeting the stated specifications are in service or supplier inventory and expressed confidence that numerous domestic producers can offer the required nuts. The BMWED did not indicate any domestic producer.
- An anonymous commenter speculated that the quantity of nuts required should be sufficient for any American shop to become able to produce the order.

Because two of the responses indicated that there may be domestic sources of the track nuts, FRA requested that NNEPRA contact the identified sources and confirm whether in fact they could provide the track nuts. The NNEPRA contacted these sources and found as follows:

1. Grainger Industrial Supply

The NNEPRA confirmed that Grainger could not provide domestically produced AREMA standard square head track nuts.

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2. Chicago Track Nut and Bolt

The NNEPRA confirmed that Chicago Track Nut & Bolt could in 10 to 12 weeks post-contract award custom fabricate standard square track nuts meeting the AREMA specifications for a cost of \$59,518.80. This cost did not include delivery.

3. Dyson Corp

The NNEPRA confirmed that Dyson Corp could in 12 to 16 weeks post contract award custom fabricate standard square track nuts meeting the AREMA specifications for a total cost of \$16,432.80. This cost did not include delivery.

The NNEPRA concluded that while the identified domestic custom fabricated track nuts could be secured in 10 to 16 weeks at a cost of approximately \$14,000 more than the lowest foreign bidder this did not mean and that domestic track nuts are "reasonably available" and the waiver should still be granted.

CONCLUSION:

For the following reason, FRA is granting NNEPRA's request. The FRA agrees with NNEPRA in that custom made fabricated track nuts that cannot be delivered for 10-16 weeks are not "reasonably available" under 49 U.S.C. § 24405(a)(2)(B), especially given that NNEPRA has mobilized for construction, prompt project implementation is consistent with ARRA's economic recovery goals, and Maine has a short construction season. In addition, NNEPRA used a competitive bidding process to procure the track nuts. Neither Chicago Track Nut and Bolt nor Dyson Corp. came forward at that time, but instead NNEPRA received bids only from suppliers offering foreign-made track nuts. This waiver is granted only because of the specific facts of this project; any future requests for a waiver regarding this product will not be granted without a specific showing that domestic track nuts for that particular project also are not reasonably available at that time. This decision does not become final until fifteen (15) days after its publication in the Federal Register.

Sincerely,



Karen Rae  
Deputy Administrator<sup>1</sup>

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<sup>1</sup> The Deputy Administrator has made this decision because Administrator Joseph C. Szabo was recused from making it. Mr. Szabo is a former United Transportation Union (UTU) employee. The UTU commented in opposition to granting this waiver request.