



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

Headquarters

1200 New Jersey Avenue S.E.
Washington DC 20590

SEP 16 2016

Dear Colleague:

The Fixing America's Surface Transportation (FAST) Act made several changes to the Federal Transit Administration's (FTA) Buy America program. I write to highlight one of them and bring to your attention modifications that will impact the transit industry. As you know, FTA's Buy America statute requires that the steel, iron and manufactured products used in FTA-funded transit projects must be produced in the United States.

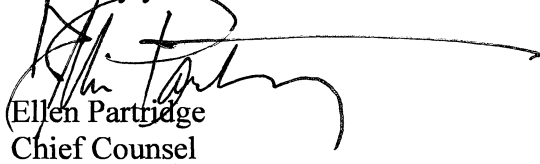
In 1995, FTA issued a general public interest waiver under 49 U.S.C. §5323(j)(2)(A) and 49 CFR 661.7(b) to exempt from its Buy America requirements all "small purchases," defined as purchases of \$100,000 or less, made by its recipients with FTA financial assistance, including capital, planning, or operating assistance. With the passage of the Uniform Guidance, also known as the Super Circular (2 CFR part 200), the definition of small purchases was tied to the simplified acquisition threshold in the Federal Acquisition Regulation (FAR), which increased the small purchase waiver to \$150,000. 2 CFR 200.88. Now, with the FAST Act, Congress has defined "small purchase" for purposes of the general public interest waiver as purchases of \$150,000 or less. 49 U.S.C. § 5323(j)(13). Notably, as it is now statutorily fixed, the small purchase threshold for purposes of Buy America will not increase with future adjustments made to the simplified acquisition threshold under the FAR.

Additionally, the statutory language is clear that the small purchase waiver applies to *purchases* of \$150,000 or less, regardless of the size of the project. Therefore, purchases made with FTA financial assistance, including capital, planning, or operating assistance, are subject to the waiver. The waiver applies both to purchases made directly by recipients or subrecipients and to purchases made by third-party contractors on behalf of the recipient or subrecipient. This provision of the FAST Act applies to all purchases made after October 1, 2015.

I also want to take the opportunity to clarify several points surrounding the practical applications of the waiver. The \$150,000 contract value is based on the total contract amount, including labor and options, and not just the value of the goods purchased. Also, be mindful that recipients are not permitted to break up procurements in order to stay under the \$150,000 threshold. Finally if your procurements may result in bids near \$150,000, recipients should include the Buy America certifications in the solicitation, with a note clarifying that if the bid is more than \$150,000, the bidder must certify per the Buy America requirements, but if the bid is \$150,000 or less, no certification will be necessary.

As always, thank you for your commitment to Buy America and U.S. jobs. As you take time to review the new FAST Act provisions, I encourage you to visit FTA's Buy America website at www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america.

Sincerely yours,



Ellen Partridge
Chief Counsel