



U.S. Department
of Transportation

Federal Transit
Administration

Chief Counsel

1200 New Jersey Avenue, SE
Washington, DC 20590

JUN 23 2017

Mr. Phil A. Washington
Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012-2952

Re: *Buy America Investigation Decision: LACMTA Buy America Compliance for
Division 20 and Division 16 Contracts – Subcontractor (Modula, Inc.) Vertical
Lift Modules*

Dear Mr. Washington:

This is the final decision of the Federal Transit Administration (“FTA”) in the above-captioned matter. For the reasons stated below, FTA has determined that the subcontractor, Modula Inc. (Modula), has met its burden of proving that it is compliant with its FTA Buy America Certificate, submitted with its bid to the LACMTA for the procurement of vertical carousels and/or vertical lift modules (collectively, “VLM”) for the LA Metro Division 20 and Division 16 Contracts.

Background

On November 23, 2016, Kardex, a manufacturer of VLM, requested that FTA investigate LA Metro’s VLM procurement because it believed that no VLM manufacturer can comply with Buy America requirements. In support of its request for investigation, Kardex submitted its market research on other VLM manufacturers, including information that “Modula is a subsidiary of an Italian firm that engages in manufacturing of all critical components in Europe.” Kardex claimed: “While Modula recently opened an assembly facility in Lewiston, Maine, their website confirms that the products supplied by the U.S. subsidiary simply undergo final assembly at the location based on components from the Italian parent company.”¹

In its petition, Kardex also highlighted Modula’s website and press releases, which state: “From August 2015, Modula’s full line of products is Proudly Made in USA from US and Imported Components.”² Kardex alleged that the successful bidder, Modula, certified compliance with Buy America, but cannot meet the requirement that VLM components are manufactured in the United States.³

¹ November 23, 2016 Petition to Investigate Buy America Compliance from James Phillips to FTA.

² *Id.*

³ *Id.*

On February 17, 2017, FTA initiated a Buy America investigation into Modula's Buy America compliance.⁴ On March 9, 2017, LACMTA responded that it conducted its own Buy America investigation of the Modula VLM, and concurred with the conclusion that the "vertical lifts used on these projects are indeed Buy America compliant." In support of its conclusion, LACMTA included March 8, 2017 letters from Hensel Phelps/Herzog and Clark Construction, and confidential diagrams and a confidential list of subcomponents.⁵

On March 30, 2017, FTA requested additional information from LACMTA regarding the VLMs.⁶ On April 4, 2017, LACMTA and Modula responded to FTA's request for additional information regarding the breakdown into components and subcomponents of the VLM including supporting information -- e.g., Modula April 3, 2017 letter with diagrams and spreadsheet and manufacturing video(s) of the U.S. Modula facility in Lewiston, Maine.⁷ On April 13, 2017, FTA held a conference call to discuss Modula's VLM manufacturing process with LACMTA, LACMTA Contractors, and Modula representatives. On April 24, 2017, LACMTA submitted additional documentation to FTA regarding Modula's manufacturing process and origin of its components.⁸

Legal Framework for Buy America

Pursuant to FTA's authorizing statute at 49 U.S.C. § 5323(j)(1), FTA may not obligate funds for a project unless "the steel iron, and manufactured goods used in the project are produced in the United States."

FTA has promulgated regulations that implement this statutory requirement. Pursuant to FTA's Buy America regulations, all "manufactured end products" must be produced in the United States.⁹ For a manufactured end product to be produced in the United States, "[a]ll of the manufacturing processes for the product must take place in the United States," and "all of the components must be of U.S. origin." FTA considers a component to be of U.S. origin "if it is manufactured in the United States, regardless of the origin of its subcomponents."¹⁰

"Manufacturing process" is defined as the "application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end-product functionally different from that which would result from mere assembly of the elements or materials."¹¹

⁴ See February 17, 2017 Letter from Dana Nifosi to Phillip Washington, CEO LACMTA.

⁵ See March 9, 2017 Letter from P. Washington (LACMTA) to D. Nifosi.

⁶ See March 30, 2017 Letter from D. Nifosi to P. Washington (LACMTA).

⁷ See April 4, 2017 Letter from P. Washington (LACMTA) to D. Nifosi.

⁸ See April 24, 2017 email S. Maymen (LACMTA) to FTA.

⁹ 49 CFR § 661.5.

¹⁰ *Id.*

¹¹ 49 CFR § 661.3.

FTA defines a manufactured “end product” as “any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at the final assembly location, that is acquired for public use under a federally-funded third-party contract, and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s).”¹²

FTA defines “component” as “any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location.”¹³

DISCUSSION

1. Modula’s VLM is a manufactured “end product” that is produced in the United States.

To be considered a manufactured “end product,” the good must be a product or system that directly incorporates constituent components at the final assembly location, it must be acquired for public use, and it must be ready to provide its intended use when assembled.¹⁴

In support of its claim that Modula’s VLM complies with Buy America, LACMTA submitted documentation from its contractors, Hensel Phelps Herzog and Clark Construction, stating:

“The attached documents demonstrate Buy America Compliance of the Vertical Lift end product (Modula Lift Machine). The machines are manufactured at 90 Alfred A Plourde Parkway, Lewiston, Maine, 04240 in a 100,000-square ft. manufacturing facility owned by Modula US. The Vertical Lift Product is comprised of multiple subcomponents that make up the end product.”¹⁵

The Maine facility is Modula’s North American headquarters and to date, more than \$6 million has been invested in the facility to upgrade automation capabilities.¹⁶ The manufacturing equipment at the facility is permanently installed. In addition, approximately 50 skilled workers are employed at the facility. Moreover, Modula opened its Lewiston, Maine, facility to supply to U.S. markets that require compliance with Buy America requirements.

The Modula VLM is a vertical lift system comprised of components and subcomponents. Each of the components and subcomponents are elements of the VLM system that work together to perform the vertical lift function. In other words, after the components of the system are assembled, the VLM is ready to provide its intended purpose. For the instant

¹² *Id.*

¹³ *Id.*

¹⁴ See 49 CFR § 661.3.

¹⁵ See March 9, 2017 Letter from P. Washington (LACMTA) to D. Nifosi.

¹⁶ See April 24, 2017 email S. Maymen (LACMTA) to FTA.

project, the VLM will be used to pick up, move, store, and retrieve good, and increase storage capacity in LACMTA's facility.

2. Modula's VLM is "produced in the United States."

Under Buy America, for Modula's VLMs to be considered "produced in the United States", the VLMs must meet two criteria: (a) all manufacturing processes must take place in the United States, and (b) all the components of the product must be of U.S. origin.¹⁷

(a) Modula's Manufacturing Processes Occur in the United States.

"Manufacturing process" is defined as the "application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end-product functionally different from that which would result from mere assembly of the elements or materials."¹⁸

Modula provided FTA with confidential manufacturing videos which show that VLM components are manufactured at its Lewiston, Maine facility. Specifically, the videos depict the entire manufacturing process and show how raw materials are transformed into the components which are then assembled to comprise the VLMs. Using lasers, sheets of U.S. steel are cut into shapes that eventually make up parts of the VLMs. After cutting, the metal sheets are formed into trays, panels, columns, floor plates, and crossbeams. These items comprise the core elements of the VLMs. After these parts are formed out of steel, they are then welded together at the facility. In addition, Modula manufactures the electrical cabinet at the Maine facility, transforming electrical hardware into a finished product.

After completion of the manufacturing process, the VLM end product is "a Modula Lift 'kit' [that] is shipped from the Modula US facility in Maine for installation on-site at the final assembly location. The manufacturing process is performed in Maine or onsite and consists of more than 'mere assembly.'"¹⁹

(b) Modula's VLM Components are of "U.S. Origin."

A component is an article, material, or supply directly incorporated into the "end product" at the final assembly location. 49 CFR 661.3. Components are considered of U.S. origin if they are manufactured in the U.S. regardless of the origin of its subcomponents. 49 CFR 661.5(d).

According to confidential documentation provided to FTA by Modula, the following VLM components are fabricated in the United States: Trays Component, Outer Panels

¹⁷ 49 CFR § 661.5.

¹⁸ 49 CFR § 661.3.

¹⁹ See April 24, 2017 email S. Maymen (LACMTA) to FTA.

Component, Rack Component, and Motion System Component. Specifically, Modula's VLM system is comprised of: 1) "Trays Component is an integral part of the VLM which is fabricated in the United States of American steel"; 2) "The Outer Panels Component is also an integral part of the structure of the VLM which is fabricated in the United States of American steel"; 3) "The Rack Component ... consists of columns, floor plates and cross-beams, all of which are fabricated in the United States of American steel ... [t]he only exceptions are the shelf rails [which are subcomponents fabricated in Italy]"; and 4) "The Motion System Component ... is fabricated in the United States of American Steel [except for subcomponents -- the vertical drive and extractors which are mechanical/electrical parts connected to and subcomponents of the Motion System Component]."²⁰

Since all of Modula's VLM components are manufactured in the United States, Modula's VLM components are of "U.S. Origin."

Decision

Based upon the foregoing, FTA concurs with LACMTA's conclusion that the Modula VLM vertical lift system is a manufactured "end product" that is produced in the United States, and that all its components are of U.S. origin. Accordingly, I find that LACMTA and Modula have demonstrated compliance with Buy America.

Pursuant to 49 C.F.R. §661.15(o), a party involved in this matter may request FTA's reconsideration, based on matters of fact or points of law that were not known or available to the party during the investigation, within ten (10) business days after the date of the decision.

Thank you for your cooperation in this matter. If you have any questions, please contact Laura Ames at Laura.Ames@dot.gov or Martia Fox at Martia.Fox@dot.gov.

Sincerely,



Dana Nifosi
Acting Chief Counsel

cc: James S. Phillips (Phillips@arguslawfirm.com)
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²⁰ *Id.*