



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

Office of Chief Counsel

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AUG 24 2015

(Via Electronic Mail: EEisland@mtacc.info)

Mr. Evan Eisland
Senior Vice President, General Counsel and Secretary
New York Metropolitan Transportation Authority
Capital Construction Company
2 Broadway
New York, NY 10004

Re: New York Metropolitan Transportation Authority's Request for a Determination
Buy America Compliance
Securiplex's Water Mist Fire Suppression System for the Second Avenue Subway Project

Dear Mr. Eisland:

I write in response to your letter to the Federal Transit Administration (FTA) dated March 18, 2015, wherein you requested FTA's concurrence with the New York Metropolitan Transportation Authority's (NYMTA) analysis that Securiplex's water mist fire suppression system complies with FTA's Buy America requirements. Securiplex supplemented NYMTA's request with information by letters dated March 24, 2015, and June 22, 2015. For the reasons set forth below, FTA finds that Securiplex's water mist fire suppression system complies with FTA's Buy America requirements.

NYMTA is interested in purchasing water mist fire suppression systems to install in Phase 1 of the Second Avenue Subway Project in New York City. NYMTA intended to purchase these systems from two different manufacturers: the Marioff Corporation and Securiplex. Following a Buy America investigation into the procurement of these systems, FTA found by letter and decision dated January 6, 2015, that Marioff's water mist fire suppression system did not comply with FTA's Buy America requirements because several components—the pipe tubing, valves, nozzles, and fittings—were being manufactured in Italy and Finland. After FTA issued its decision, NYMTA requested FTA to concur with its analysis that the alternative system—Securiplex's system—complies with FTA's Buy America requirements.

FTA is providing NYMTA with \$1,373,892,821 to support Phase 1 of the Second Avenue Subway Project, and as a condition of receipt of these funds, MTA agreed to be bound by FTA's Buy America requirements through its execution of the project's Full Funding Grant Agreement and through Section 16 of FTA's Master Agreement. 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.” The purpose of this

requirement is to preserve and create jobs in the United States by ensuring that taxpayer-funded projects promote domestic manufacturing.

FTA has promulgated regulations that implement this statutory requirement. Pursuant to those regulations at 49 C.F.R. § 661.5, all “manufactured end products” must be produced in the United States. 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.” 49 C.F.R. § 661.5(d) (2014). 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.” 49 C.F.R. § 661.5(d)(2).

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).” 49 C.F.R. § 661.3. 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.” 49 C.F.R. § 661.3.

In its Buy America decision dated January 6, 2015, FTA found that a water mist fire suppression system is a “manufactured end product” for purposes of Buy America, and that it is not a “component” of the larger transportation facility. Each of the components of a water mist fire suppression system work together to perform an intended function—controlling and extinguishing fires. Each of the elements, or “components,” of the system must be manufactured in the United States.

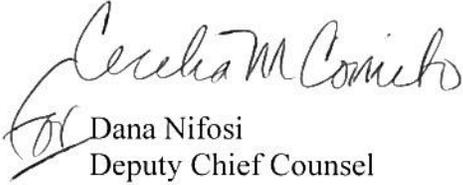
Securiplex developed a list of the components of its water mist fire suppression system, which NYMTA submitted to FTA. The list of components includes: (1) a filter assembly, (2) high-pressure modular pump units, (3) a zone valve assembly, (4) nozzles, (5) a pump controller, and (6) distribution piping and tubing. Securiplex certified that this list represents the complete list of components for the system, and NYMTA and Securiplex represented to FTA that these components are being manufactured in the United States.

Based on this information and the representations from NYMTA and Securiplex, FTA concurs with the characterization of each of the above-referenced elements of the system as a “component.” The list of components is consistent with other water mist fire suppression systems, such as Marioff’s, and the characterization of these elements as components is consistent with FTA’s decision of January 6, 2015. Given the fact that each of these components is being manufactured in the United States, FTA finds that Securiplex’s water mist fire suppression system complies with FTA’s Buy America requirements.

Letter to Evan Eisland
Buy America Compliance—Securiplex's Water Mist Fire Suppression System

Thank you for your cooperation in this matter. If you have any questions or concerns, please do not hesitate to contact my Regional Counsel, Michael Culotta, by telephone at (212) 668-2178.

Sincerely,


Dana Nifosi
Deputy Chief Counsel

cc:

- Robert Hunter, Esq., Securiplex (Via Electronic Mail: rhunter@securiplexusa.com)
- Michael L. Culotta, Esq., FTA (Via Electronic Mail: Michael.Culotta@dot.gov)
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