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May 13, 2022

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Docket Management Facility
U.S. Department of Transportation
M-30, West Building Ground Floor, Room W12-140
1200 New Jersey Avenue S.E.
Washington, DC 20590

Subject: Docket DOT-OST-2022-0047

Dear Docket Clerk:

On behalf of the 1,500 public- and private-sector member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Department of Transportation's notice and request for comments regarding Notice of Temporary Waiver of Buy America Requirements for Construction Materials published April 28, 2022.

APTA strongly supports DOT's proposed temporary waiver of the Buy America Requirements for Construction Materials. The request for a waiver acknowledges that the construction material requirement will take time to implement in an already constrained supply chain that threatens to implode if further uncertainty is injected into the contracting process. Moreover, we are encouraged that DOT intends to use the waiver period to further engage the public transportation industry and other partners on implementation of the Buy America Requirements for Construction Materials.

As part of our effort to provide industry feedback, APTA surveyed its members on the Buy America requirements. Based on this feedback, APTA strongly believes that the current Federal Transit Administration (FTA) and Federal Railroad Administration (FRA) Buy America requirements (except for construction materials) are wholly consistent with the Build America, Buy America Act (BABA) (P.L. 117-58, Division G, Title IX). Thus, APTA recommends that neither FTA nor FRA make any changes to the rigorous rolling stock and final assembly requirements under current law and regulation. In addition, options in rolling stock contracts should be subject to the same Buy America requirements as the base contract. If a grant is executed for a base contract on a rolling stock

procurement before May 14, 2022, all options associated with the base contract should be subject to the base contract's requirements, even if the options are funded by a grant executed on or after May 14.

In addition, we provide feedback from some of our members who made the following recommendations:

- Given that the Office of Management and Budget (OMB) Guidance allows for several new types of general applicability waivers within the public interest category, DOT should consider the creation of the following general applicability public interest waivers:
 - De Minimis: Establish a threshold of five percent of project costs up to a maximum of \$1 million. A De Minimis waiver would avoid potential delays to contract awards and job creation that might occur if grantees are required to obtain individual or unexpected Buy America waivers for minor components of large projects.
 - Minor Components: Consistent with the OMB guidance that allows federal agencies to issue general applicability waivers for minor components, issue a public interest waiver for non-domestically produced miscellaneous minor components comprising no more than five percent of the total material cost of an otherwise domestically produced iron and steel product. Such a waiver at the limits allowed by the OMB Guidance could create more U.S. jobs.
 - Adjustment Period: Issue a four-year public interest waiver to provide agencies sufficient time to transition to new rules and processes established under OMB's Guidance. This transition period will enable both public transit agencies and relevant industries to transition to the new Buy America rules and comply with any new regulations while avoiding project delays.
- With regard to the Construction Materials requirement, the OMB Guidance requires that "agencies should consider 'all manufacturing processes' for construction materials to include at least the final manufacturing process and the immediately preceding manufacturing stage for the construction material." DOT should not consider the origin of raw materials when defining the requirements for construction materials. Our members would appreciate clear guidance on what constitutes "the final manufacturing process and immediately preceding manufacturing stage" and a member urges DOT to include the following for each construction material:
 - Drywall: Require manufacturing of drywall to occur in the U.S. but allow the gypsum raw material to be imported.
 - Lumber: Require the sawing, milling, and final manufacturing of the lumber to occur in the U.S. but allow the logs to be imported.

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- Non-ferrous Metals: Require the manufacturing of non-ferrous building materials to occur in the U.S. but allow the raw material (e.g., copper, tin) to be imported.
- Plastic and Polymer-based Products: Require the cutting, milling, and any required dapping to occur in the U.S. but allow blocks of polymer and other raw materials to be imported.
- Glass: Require manufacturing of the glass construction material (including optic glass) to occur in the U.S. but allow any raw materials to be imported.

We appreciate the opportunity to comment and we welcome the opportunity to partner with DOT to bring together interested members of the public transit industry during the 180-day waiver period to provide additional feedback. Should you have any questions regarding the positions or comments discussed in this letter, please contact Linda Ford, APTA's General Counsel at LFord@apta.com or 202-496-4808.

Sincerely,



Paul P. Skoutelas
President and CEO