

# New Day at FTA

- Girder Rail – waivers no longer approved
  - Despite FTA outreach to NIST, no US manufacturer willing to roll girder rail
  - Now must use either T-rail or block rail with no evidence of comparability/interoperability
- FTA Dear Colleague
  - No waivers with ARRA funds
  - Heightened scrutiny of cost differential waivers
  - Expand ARRA policy to all FTA funds

**PROCUREMENT & MATERIALS  
MANAGEMENT LEARNING ZONE**



# New Day at FTA

- SacRT experienced inverter failures for 8 year old rail cars
  - Cars idled while replacements sought but no US supplier identified
  - Waiver request submitted and SacRT directed to withdraw request and use non-federal monies
- Rebuild versus overhaul
  - Latter helps “achieve” useful life and procurement of replacement parts subject to 100% Buy America

# Utility Relocation

- Prior to Spring 2012
  - Utility owners are property owners and not Third Party contractors and beyond scope of FTA Circular 4220.1F
  - Considered property acquisition and not a procurement
- Spring 2012 - Buy America applied to entire scope of project, regardless of source of funding

# MAP-21

- No changes to domestic content requirements
- §5323(j)(3) – FTA must make written explanation of the determination public and provide opportunity for public comment
- Annual Report to Congress listing any waivers granted

# MAP-21

- §1518 of MAP-21 amends 23 U.S.C. §313
  - Applies Buy America to all contracts eligible for assistance under title 23 within scope of a finding, determination or decision under NEPA, regardless of funding source
  - If at least one contract within scope of NEPA document is funded with funding provided under title 23
  - Applies even if no federal funding paid for NEPA, preliminary engineering, ROW acquisition or non-construction activity



# Scope of Project

- Agreement between grantee and FTA outlines use of FTA funds
- If grantee reimbursing utility for cost of materials moved, materials from general inventory or “spare” materials – within scope
- Unacceptable – efforts to limit scope or enter agreements
- State or local law
  - Buy America doesn’t apply if utility is prohibited from seeking reimbursement from grantee or another source of local money

# Observations

- Identify and engage utilities early in project
  - Inform utility of obligation to certify compliance
  - Component and subcomponent suppliers are not required to certify
  - However, since utility is bound by its certification, obtaining certification from suppliers and vendors ensures accuracy
- Engage FTA early if issue identified
- Undertake a legal analysis of subcomponents, components and end products

# Observations

- Non-availability waivers still being granted
  - Depending on the item, FTA will likely reach out to NIST to identify a potential supplier
  - Allow at least 6-9 months for *Federal Register* notice and comments process, as well as FTA review of any comments
- Moved beyond grief to begrudging acceptance of FTA's policy position