

Sacramento Regional Transit District - July 10, 2014

Ms. Diane Nakano
Assistant General Manager, Engineering and Construction
Sacramento Regional Transit District
P.O. Box 2110
Sacramento, CA 95812

Dear Ms. Nakano:

I write in response to the Sacramento Regional Transit District's (SacRTD) request for guidance on applying the Federal Transit Administration (FTA) Buy America rules to utility work the Pacific Gas and Electric Company (PG&E) is performing on Phase 2 of the South Sacramento Corridor project (Project).

I. Background

On November 1, 2013, SacRTD asked FTA how to categorize a list of goods to be used by PG&E on the Project. SacRTD proposed that FTA categorize the gas transmission system as an end product; the valve lot and gas piping network as components, and the following items as subcomponents: 24-inch ball valves, 1 0-inch ball valves, 24-inch pipe caps, 16-inch pipe caps, ~-inch pipe plugs, 1 X 3-inch pipe nipple, %-inch elbow socket, one-inch valve tee, two-inch nipple, 16-inch pipe, eight-inch pipe, 1 0-inch pipe cap, eight-inch pipe elbow, and 1 0-inch pipe elbow. SacRTD requested for FTA to provide a written response within 30 days from the date of its November 1, 2013 letter. [[1](#)]

Through a series of email communications between November 5, 2013 and November 14, 2013, FTA requested and received additional descriptions and drawings of the gas transmission system from SacRTD. According to SacRTD, the "valve lot" is a part of the gas transmission system and:

The gas transmission system is a series of pipes, elbows, and control valves that move natural gas over long distances (between cities and states) at high pressures. The valve lot is a junction of one or more gas transmission lines. It is a large underground concrete box (approximately 10' x 20') with a structural cover that contains control valves and other subcomponents. Currently, the gas flow is shared with the 16 inch line on the RT corridor and

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a 10 inch line that travel perpendicular to the corridor. The valves in the valve lot contain controls to monitor their status. Pressure relief devices are typically present to ensure the safety of the system should the operating pressure become too high. Pressure monitoring devices are typically present as well. Valves and other subcomponents are typically bolted in place for easy removal. Piping is typically welded in place for structural integrity.

On December 11, 2013, by letter, SacRTD informed FTA that it had authorized PG&E to move forward with the gas transmission system relocation work in order to minimize project delays and cost impacts.[2]

On December 12, 2013, FTA sent sacRTD an email stating that the request was still under review and advising SacRTD to wait until FTA completed its review. In the same email, FTA requested additional information regarding the entire gas transmission system.

On December 13 and 18, 2013, SacRTD provided additional details regarding the gas transmission line, including the following:

The gas transmission system is comprised of major transmission pipeline that intersects a minor pipeline. The valve lot as described by PG&E is a component of the transmission pipeline that is required to safely regulate the flow of gas from the major pipeline to the transverse minor pipeline. No single component of the valve lot (subcomponent of the gas transmission system) can accomplish the safe regulation of flow from one pipeline to the other; it takes the entire assembly of the valve lot.

On February 4, 2014, SacRTD stated that it was moving forward on the utility work. According to SacRTD, it could acquire domestic alternatives for items found by FTA to be non-compliant, but that it would take three months to a year in order to do so because of the procurement and validation process.

On February 6, 2014, FTA again advised SacRTD to wait until FTA issued a determination. Notwithstanding FTA's recommendation, SacRTD proceeded with the utility relocation work, which is now completed, with contingency plans to replace any materials that FTA determined were non-compliant with Buy America.

On February 26, 2014, FTA learned that PG&E would have difficulty replacing some of the valves because they are now buried underground and difficult to access. In addition, taking the gas transmission line out of service while any non-compliant materials are being replaced would require "significant advance pre-planning and coordination effort for the utility."

II. Buy America

By law, all contracts needed to complete an FTA-funded project, including utility contracts, must comply with the Buy America requirements of 49 U.S.C. § 5323(j), as implemented by 49 C.F.R. part 661. Buy America requires that all steel, iron, and manufactured products be produced in the United States.[3]

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For manufactured products to be considered produced in the United States:

1. All of the manufacturing processes for that product must take place in the United States; and
2. All of the components of that product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. [4]

An "end product" means:

Any vehicle, structure, product, article, material, supply, or system, which directly incorporates constituent components at the final assembly location ... and which is ready to provide its intended end function or use without any further manufacturing or assembly change(s). [5]

Thus, based upon this definition of an end product, a system may also be an end product under Buy America.

A system is a "machine, product, or device, or a combination of such equipment, consisting of individual components, whether separate or interconnected by piping, transmission devices, electrical cables or circuitry, or by other devices, which are intended to contribute together to a clearly defined function "[6] In determining whether a system is an end product or consists of multiple end products, FTA looks at various factors, including "whether products performed on an integrated basis with other products in a system, or are operated independently of associated products in the system, or whether transit agencies routinely procure a product separately (other than as replacement or spare parts." [7]

Appendix A to § 661.3 (of 49 C.F.R.) provides that infrastructure projects not made primarily of steel or iron, including structures, are manufactured end products and therefore subject to 49 C.F.R. § 661.5(d).

A "component" of a manufactured end product is defined as "any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into the end product at the final assembly location." [8]

III. Discussion

After carefully reviewing the information provided by SacRTD and PG&E, FTA has determined that the gas transmission system and valve lots are manufactured end products.

The gas transmission system includes a series of pipes, elbows, and control valves. The pipes and valves are directly incorporated into the gas transmission system end product, and therefore, components.

The valve lot is not a component of the gas transmission system, but a separate end product containing a number of components. [9] The pipes and valves contained in the valve lot, i.e., the concrete box, are not treated any differently under Buy America from those outside the

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valve lot. Therefore, the 24-inch ball valves, 10-inch ball valves, 16-inch pipe, and eight-inch pipe are components of the valve lot and must be produced in the United States.

Of the foreign-sourced materials that you listed as part of the valve lot, the 24-inch pipe caps, 16-inch pipe caps, 1/2-inch pipe plugs, 1 X 3-inch pipe nipple, 3/4-inch elbow socket, one-inch valve tee, two-inch nipple, 10-inch pipe cap, eight-inch pipe elbow, and 10-inch pipe elbow are subcomponents and may be produced outside the United States. While the pipes are components of the gas transmission system, FTA considers the elbows as subcomponents of these component pipes. [10]

IV. Conclusion

As I explain above, the gas transmission system and valve lots are end products. Of the foreign sourced materials that you listed in your letter, the 24-inch ball valves, 10-inch ball valves, 16-inch pipe, and eight-inch pipe are components and must be produced in the United States.[11] Of the foreign-sourced materials that you listed as part of the valve lot, the 24-inch pipe caps, 16-inch pipe caps, 1/2-inch pipe plugs, 1 X 3-inch pipe nipple, 3/4-inch elbow socket, one-inch valve tee, two-inch nipple, 10-inch pipe cap, eight-inch pipe elbow, and 10-inch pipe elbow are subcomponents and may be produced outside the United States.

Any foreign-sourced components that PG&E has installed as part of its utility work for Phase 2 of SacRTD's South Sacramento Corridor project are non-compliant and must be replaced with U.S.-manufactured components.

If you have any questions, please contact Mary J. Lee at (202) 366-0985 or mary.j.lee@dot.gov

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Sincerely,

Dana Nifosi
Deputy Chief Counsel

[1] FTA generally requires a minimum of 30 days to review and respond to requests for Buy America letters of interpretation. Response times can often take longer depending upon the circumstances, including whether FTA has all of the information necessary to make a determination.

[2] In a December 10, 2013 letter to PG&E, SacRTD authorized PG&E to move forward and stated that it had "recently met with FTA and they indicated a favorable response to this issue was likely."

[3] 49 U.S.C. § 53230(1).

[4] 49 C.F.R. § 661.5(d).

[5] 49 C.F.R. § 661.3.

[6] Id.

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[7] Id.; see also 72 Fed. Reg. 53688, 53693 (Sept. 20, 2007).

[8] 49 C.F.R. § 661.3.

[9] FTA did not review the "gas piping network" because SacRT has indicated that guidance was not necessary at this time.

[10] Note that not all of the components may be listed here. Only the components that SacRT stated it (or PG&E) had purchased non-domestically and requested additional guidance from FTA on are included in this letter.

[11] Note that not all of the subcomponents of this end product may be listed here. Only the subcomponents that SacRT requested further guidance from FTA on are included in this letter.

Updated: Wednesday, March 16, 2016

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