



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

Chief Counsel

1200 New Jersey Avenue S.E.
Washington, DC 20590

JUL 9 2015

Jennifer M. Bruner
Director of Compliance & Civil Rights
IndyGo
1501 West Washington Street
Indianapolis, IN 46222

Re: *Buy America Waiver for Microprocessors, Computers, Microcomputers, Software, or other such devices which are used solely for the purpose of processing or storing data*

Dear Ms. Bruner:

I write in response to your April 16, 2015 letter in which you asked the Federal Transit Administration the applicability of the permanent, general public interest waiver from Buy America requirements set forth in Appendix A to 49 C.F.R. 661.7 to a list of equipment associated with the digital camera surveillance system to be procured from Simplex Grinnell for the transit center facility and site.

The requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. § 5323(j). The Buy America requirements may be waived if the item or items being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. 49 C.F.R. § 661.7(c). There is a permanent waiver for microcomputer equipment and software:

A general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data.

49 C.F.R. 661.7, Appendix A.

In an earlier rulemaking, FTA provided some guidance regarding the definition of a microprocessor/microcomputer:

A computer system whose processing unit is a microprocessor. A basic microcomputer includes a microprocessor, storage, and input/output facility, which may or may not be on one chip. The same source defines computer system as: A functional unit consisting of one or more computers and associated

software, that uses common storage for all or part of a program and also for all or part of the data necessary for the execution of the program; executes user-written or user-designated programs, performs use-designated data manipulation, including arithmetic operations and logic operations; and that can execute programs that modify themselves during their executions. A computer system may be a stand-alone unit or may consist of several interconnected units. Synonymous with ADP system, computing system.

50 Fed. Reg. 18760 (May 2, 1985).

When the waiver is properly applied, a manufacturer may use foreign microcomputers and microprocessors without violating the Buy America requirements. In 2003, FTA withdrew a long-standing advanced notice of proposed rulemaking (ANPRM) seeking public comments on the microcomputer waiver, stating in its notice of withdrawal:

It should be noted that FTA does not apply the waiver to an entire product because it contains a microcomputer. The parameters of the waiver as it currently exists are that if the end product is itself a microcomputer or software as defined above, Buy America is waived. If, however, the end product contains a microcomputer (e.g., a farecard system), that microcomputer is exempt from the requirements of Buy America, but the rest of the end product must be in compliance.

68 Fed. Reg. 9810 (Feb. 28, 2003).

FTA applied that reasoning to subsequent decisions, finding for example, that some components of a fare collection system were subject to the waiver, but others were not. Specifically, we found that “[t]he bill and coin validator, and the printer, are not, themselves, microcomputers, although they may each contain embedded microprocessors.” CoinCard letter, May 23, 2003. *See also*, MTA letter, September 23, 2003, and Vansco Electronics letter, September 15, 2003.

FTA’s treatment of computer equipment was reinforced by Congress in section 3023 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. Law 109-59), in which Congress directed FTA to:

[C]larify that any waiver from the Buy America requirements issued under section 5323(j)(2) of such title for a microprocessor, computer, or microcomputer applies only to a device used solely for the purpose of processing or storing data and does not extend to a product containing a microprocessor, computer, or microcomputer.

Consequently, this statutory directive was carried out through an implementing regulation published in 2007, following a public notice-and-comment process. 72 Fed. Reg. 53688 (September 20, 2007).

As discussed in the original definition, a microcomputer is a computer based on a microprocessor. A microprocessor is a computer whose central processing unit is contained on one or a small number of integrated circuits. Microcomputers may be stand-alone units or they may be embedded in other equipment. They must have, or be, controllers or communication processors and be capable of processing, storage, programming, and input/output facilities. Microcomputers may be grouped within larger systems or equipment, consisting of several interconnected units each functioning as either stand-alone units, embedded into the equipment or system, or a mix of both. Related hardware and equipment that may be controlled by a microprocessor is not covered by the microcomputer waiver. Accordingly, while your procurement includes the purchase of microcomputer equipment, all of the elements identified on this procurement are not covered by the waiver.

In the 2007 implementing regulation addressed above, FTA clarified the definition of “end products” to include “systems” (see, 49 CFR 661.3) and security systems are specifically identified in the list of representative list of “manufactured end products” in Appendix A to section 661.3. As a “manufactured end product,” section 661.5(d) requires all of its components to be manufactured in the United States, and the attachment to your letter placed these components into categories labelled “PC Equipment,” “Network Switch,” “Server,” “Data Storage,” “Digital Cameras,” and “PC component input device.” You stated in your letter that all of the items should be included within the microprocessor waiver because they comprise the network components for IndyGo’s Downtown Transit Center and its digital camera surveillance system.

Close review of your letter, however, indicates that some of the items are incorrectly categorized, and some are not covered under the microprocessor waiver. For example, the Samsung NC241 is listed as “PC Equipment,” although this device is a video display monitor that FTA considers a “computer peripheral,” as monitors are routinely purchased as stand-alone devices and merely display, rather than process or store data. Similarly, the Axis keyboard/joystick labelled as a “PC component input device” is a peripheral component of the system, as it merely plugs into a data processing unit, rather than being physically incorporated into a larger data processing unit. In contrast, many of the individual two-port network transceivers that are categorized as “network switches” are actually “subcomponents” because they physically and functionally are incorporated into larger electronic components, such as the HP 5500 48-port network switch or the HP 2530 50-port network switch.

Nevertheless, the switches are eligible for the microprocessor waiver because their primary function is to process data. The Dell PowerEdge server and the Dell Equallogic server are also covered under the waiver because their primary function is to process and store data. The HP transceivers are not subject to Buy America requirements because of their status as subcomponents. The remaining items – the video display monitor, the various digital cameras, and the keyboard/joystick – are not covered within the waiver because their primary function is greater than simply processing and storing data.

I hope this information has been helpful. If you have any questions, please contact Richard Wong at 202-366-0675 or richard.wong@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dana Nifosi', with a stylized flourish at the end.

Dana Nifosi
Acting Chief Counsel

cc: Derek Davis, FTA
Kathryn Loster, FTA
Richard Wong, FTA

Attachment A

Part Number	Category	Buy America
NC241	PC Equipment	Buy America Applies
HP J9853A	Network Switch	Microprocessor Waiver Applies
HP J9152A	Network Switch	Microprocessor Waiver Applies
HP J4858C	Network Switch	Microprocessor Waiver Applies
HP JG239A	Network Switch	Microprocessor Waiver Applies
HP JD359B	Network Switch	Microprocessor Waiver Applies
HP JD108B	Network Switch (Transceiver)	Subcomponent – Buy America does not apply
HP JD117B	Network Switch (Transceiver)	Subcomponent – Buy America does not apply
HP JD368B	Network Switch	Microprocessor Waiver Applies
HP JD097C	Network Switch	Microprocessor Waiver Applies
HP JH012A	Network Switch	Microprocessor Waiver Applies
Dell R530	Server	Microprocessor Waiver Applies
Equallogic PS6510e or Equivalent	Data Storage	Microprocessor Waiver Applies
WV-SW598	Digital Cameras	Buy America Applies
WV-Q122A	Digital Cameras	Buy America Applies
P3384-VE	Digital Cameras	Buy America Applies
P3365-VE	Digital Cameras	Buy America Applies
P3365-V	Digital Cameras	Buy America Applies
SNV-6012N	Digital Cameras	Buy America Applies
WV-SF138	Digital Cameras	Buy America Applies
M3007-P	Digital Cameras	Buy America Applies
5020-101/201	PC Component input device	Buy America Applies