



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

REGION IV
Alabama, Florida, Georgia,
Kentucky, Mississippi,
North Carolina, Puerto
Rico, South Carolina,
Tennessee, Virgin Islands

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Atlanta, GA 30303
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404-865-5605 (fax)

October 28, 2009

Ms. Vickie S. Bourne
Executive Director
Office of Transportation Delivery
Transportation Cabinet
Frankfort, Kentucky 40622

Dear Ms. Bourne:

This is the Federal Transit Administration's (FTA) response to the Office of Transportation Delivery's (OTD) request dated October 27, 2009, for a waiver of the "Buy America" provision as it applies to OTD's procurement of minivans and minivan chassis to be operated by subrecipients of OTD throughout the State of Kentucky.

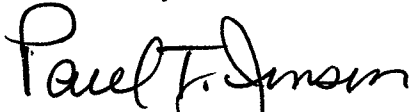
The Federal Transit Administration's (FTA's) general requirements concerning domestic preference for the procurement of manufactured products are set forth in 49 USC § 5323(j). Under 49 USC § 5323(j)(2)(b), those requirements shall not apply if the item or items being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The implementing regulation, 49 CFR Section 661.7(c)(1), provides that "[i]t will be presumed that the conditions exist to grant this non-availability waiver if no responsive and reasonable bid is received offering an item produced in the United States."

OTD issued an invitation for bids for the purchase of minivans to which two bids were received; one from National Bus Sales which bid a modified low-floor, ramped-equipped minivan at \$32,692 per unit for a total of \$1,471,140 and one from Cardinal Chrysler Jeep Dodge at \$20,566.76 per unit for a total of \$1,131,172. Both bidders submitted a certificate of non-compliance with Sections 165(a) and 165(b)(2) of the Surface Transportation and Uniform Relocation Assistance Act of 1987. The items requested are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality. The items quoted by both bidders are manufactured and assembled in Canada. No approved and/or acceptable equipment of comparable quality is manufactured in the United States.

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TRANSP. DELIVERY

Given the information you have provided, I have determined that the grounds for a "non-availability" waiver exist. Therefore, pursuant to the provisions of 49 USC § 5323(j)(2)(B) a waiver is hereby granted for the above referenced procurement.

Sincerely,

A handwritten signature in black ink that reads "Paul T. Jensen". The signature is written in a cursive style with a large initial "P".

Paul T. Jensen
Regional Counsel

Cc: Jayme Blakesley (TCC)