

**Board Report**

File #: 2023-0657, **File Type:** Motion / Motion Response**Agenda Number:** 10.

**FINANCE, BUDGET, AND AUDIT COMMITTEE
OCTOBER 18, 2023****Motion by:****DIRECTORS HORVATH, BASS, BUTTS, YAROSLAVSKY, and NAJARIAN**

The *Build America, Buy America Act*, enacted as part of the *Infrastructure Investment and Jobs Act* on November 15, 2021, established a domestic content procurement preference for Federal infrastructure projects in the United States. The Act maximizes the Federal government's use of services, goods, products, and materials produced in the United States and requires that three separate product categories: 1) Iron or Steel Products; 2) Manufactured Products; and 3) Construction Materials, be produced in the United States when used in covered infrastructure projects. The Act is central to President Biden's Investing in America agenda intended to drive domestic manufacturing, rebuild America's infrastructure, and create good-paying jobs. During the February 2023 State of the Union address, President Biden committed to ensuring construction materials used in federally funded infrastructure projects are made in America.

The Office of Management and Budget (OMB) subsequently issued "Guidance" related to the *Build America, Buy America Act* and provisions contained in the "*Infrastructure Investment and Jobs Act*", which require that after 2020, at least seventy percent (70%) of the cost of components and subcomponents for rolling stock transit vehicles be produced in the United States. Final assembly for rolling stock must also occur in the United States.

These provisions also apply to Federal financial assistance awards (e.g., grants and loans) made after May 14, 2022, that are used to construct, alter, maintain, or repair infrastructure in the United States. According to the Federal Transit Administration (FTA) a "grantee must include in its bid or request for proposal (RFP) specifications for procurement of steel, iron or manufactured goods (including rolling stock) an appropriate notice of the Buy America provision and require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with 49 CFR, Sec. 661.6 or 661.12."

Similarly, in 2019 Congress passed the "*Transportation Infrastructure Vehicle Security Act*" (TIVSA) as part of the "*National Defense Authorization Act*" which imposed restrictions on the allocation of federal funding, including funds administered by the FTA, for the purchase of rolling stock produced by certain "State-Owned Enterprises." In response to the enactment of these provisions of law, in 2020 the FTA published a document providing guidance for Section 7613 of the Defense Act. The document reads in part: "*Section 5323(u)(1) generally prohibits FTA funding of procurement of rolling stock from any manufacturer that is 'owned or controlled by, is a subsidiary of, or is otherwise related*

legally or financially to a corporation based in certain foreign countries.”

The Los Angeles County Metropolitan Transportation Authority is proceeding with several voter-approved projects, currently in planning or under construction, that are seeking or intending to apply for federal funding (Sepulveda Transit Corridor Project; L (Gold) Line Extension; West Santa Ana Branch Corridor; K (Crenshaw) Line Northern Extension; East San Fernando Valley Light Rail, Eastside Transit Corridor Phase 2, *et al.*).

The Office of Management and Budget (OMB) recently (August 2023) issued final guidance to supplement the *Build America, Buy America Act* and provisions contained in the *Infrastructure Investment and Jobs Act*. The new guidance, effective October 23, 2023, is intended to be high-level coordinating guidance for Federal agencies to use in their own direct implementation of *Build America, Buy America* and will impact all entities who have or receive covered awards.

In the not-too-distant future, the Metro Board will be asked to make decisions on several draft and final environmental impact reports, and locally preferred alternatives for projects that may be seeking federal financial assistance. These decisions will weigh heavily in the context of what Metro has referred to as an impending “fiscal cliff” in fiscal years 2024 and 2025, significantly increased construction costs, as well as the upcoming five-year and decennial evaluations of Measure M projects. It is therefore timely and necessary for Metro to conduct an exhaustive evaluation of the applicable provisions of the *Build America, Buy America Act*, provisions contained in the *Infrastructure Investment and Jobs Act*, and related federal guidance, and report to the Board on any impacts the law may have on the ability to deliver Measure R and Measure M voter approved infrastructure projects.

SUBJECT: THE IMPACT OF THE BUILD AMERICA BUY AMERICA ACT ON LA METRO’S MAJOR CAPITAL PROJECTS MOTION

RECOMMENDATION

APPROVE Motion by Directors Horvath, Bass, Butts, Yaroslavsky, and Najarian that the Metro Board instruct the Chief Executive Officer to report to the Board in March 2024 with an evaluation of the applicable provisions of the *Build America, Buy America Act*, provisions contained in the *Infrastructure Investment and Jobs Act* and related federal guidance (49 U.S.C. § 5323(j)), and any impact the Act may have on the feasibility of transit projects seeking a Full-Funding Grant Agreement with the FTA.