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Submitted via smartcitychallenge@dot.gov

The Honorable Anthony Foxx
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Secretary Foxx,

The Telecommunications Industry Association (TIA), the leading trade association for global manufacturers, vendors, and suppliers of information and communications technology (ICT), and its members write to inquire about the extent to which the U.S. Department of Transportation (USDOT) intends to apply Buy America provisions to the purchase of technology by grantees under the Smart City Challenge. TIA and its members are excited about this new effort that will encourage and facilitate localities using innovative technologies to improve their area's transportation infrastructure and enable more efficient, cost-effective commuting. Our members are technology leaders that develop and integrate hardware, software solutions, and ICT products, many of which can be used to improve the efficiency and usability of the transportation sector. We are, however, concerned that the project's potential may be inhibited because grantees may face difficulties procuring the desired technology. On the Challenge's questions and answers page, USDOT states regarding Buy America that "[n]o regulations or policies have been waived to date for this planned demonstration"¹ which is the impetus for TIA's letter below regarding ICT products.

We are concerned that the Department's domestic content requirements with respect to manufactured goods may make it increasingly difficult for grantees to identify and secure sources of supply for technology solutions for life safety, security and, information technology and communications. In the past, USDOT sub-agencies like the Federal Highway Administration (FHWA) have issued memos clarifying that Buy America requirements are waived for manufactured products other than steel and iron manufactured products.² To ensure that every possible technological solution is available to fulfill the program's goals, we ask that the USDOT either (1) clarify that the Smart City Challenge grants will utilize the FHWA Buy America rules which exempts manufactured products (except those which are "predominately steel products"), or (2) grant a broad public interest waiver from Buy America for manufactured products as it relates to the Smart City Challenge program.

A public interest waiver for ICT products is necessary for the following reasons:

- First, much of the finished products used to manage and operate information and communication technology infrastructure are manufactured outside of the United States. The manufacturing supply chain varies by product and changes constantly due to the influence of global supply and demand. The result is a very competitive and complex production landscape with components and end

¹See USDOT Questions and Answers for the Smart City Challenge, <https://www.transportation.gov/smartcity/q-and-a-2>.

²See Federal Highway Administration Memorandum "Clarification of Manufactured Products under Buy America" <https://www.fhwa.dot.gov/construction/contracts/121221.cfm>.



products being manufactured and assembled in a large number of countries. While, arguably, the Secretary of Transportation could rely on the “non-availability” exception for granting a waiver, the burden placed on the Department of Transportation in sourcing and evaluating the availability of each component of equipment and software would be significant, and the task of sourcing and evaluating would be difficult to complete given the speed with which the Smart City Challenge will be awarded.

- Second, a limited waiver will help facilitate the purposes of the Smart City Challenge - namely, the use of advanced ICT to help cities solve multi-modal transportation challenges. For transit applications, following the Federal Transit Administration (FTA) rules (49 CFR Part 661) would require systems to be considered separate end products, requiring both final assembly of the end product in the United States and a 100% domestic content requirement for product components. In 1982, Congress allowed the FTA to adopt a “microprocessor/microcomputer” waiver to cover both software and hardware meeting certain criteria, but not for all products containing microprocessors.³ Further, the Buy America certification requirements for rolling stock may also pose difficulties for sources of supply for challenge applicants. Since the USDOT “intends for this challenge to address how emerging transportation data, technologies, and applications can be integrated with existing systems in a city,” one can presume that many of these smart devices will contain microprocessors and that supply sources for device components may not be available within the United States. Applicants to the Challenge must have the flexibility to incorporate the most technically advanced components into their infrastructure, and providing a limited waiver for this challenge gives them the flexibility necessary to ensure access to the latest technologies.
- Third, consistent with the Smart City Challenge, a limited waiver will help stimulate competitive procurement with greater opportunities for the grantees to choose from a wide variety of vendors. This will reduce the burden of Buy America compliance concerns in the grant application process, provide cities greater certainty that their plans will not face supplier roadblocks, and allow them to focus on developing creative solutions.

The technology sector is very dynamic and global, and supply chains can change over the course of a buildout. Subjecting public applicants for Smart City Challenge funds to the Buy American provision ultimately would unnecessarily tie the applicants in knots. We strongly urge the USDOT to adopt this waiver to achieve effective deployment of the Smart City project. We have attached as an appendix a list of examples of the types of equipment for which waiver is sought; this list is not meant to be exhaustive or representative of the full scope of ICT products implicated by Buy America requirements. Please do not hesitate to contact us, should you have any questions regarding our request.

Sincerely,

Scott Belcher
Chief Executive Officer
Telecommunications Industry Association

³ APPENDIX A TO § 661.7 notes: “(b) 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.”



APPENDIX

Examples of Types of equipment for which a Buy America waiver is being sought:

IP-based routers, including wireless routers
IP-based switches
Computers and other information technology devices

DSRC-enabled radios
Wireless controllers
Wireless bulk data transfer solutions for fleets
IP-based solutions to enable voice interoperability on different radio systems

Automated traffic and management control equipment
Transit signal prioritization processor
Fleet tracking and management solutions, including Computer-aided dispatch and automatic vehicle location (CAD/AVL) system
Software solutions addressing real time transit information for passengers

Digital video solutions and video surveillance, including cameras, recording equipment or cloud storage solutions.
Digital signage for roadways or transit information.
End point devices

Network management and data analytics software

Firewall and security solutions and software

Fare collection systems and data processing systems;
Energy generation, storage and management systems
Management systems necessary to control HVAC, lighting, utilities or other critical infrastructure systems.
Life safety systems, including facility access control, or fire or hazardous gas detection

Any other information technology and communications products