



U.S. Department  
of Transportation  
Federal Transit  
Administration

REGION VII  
Iowa, Kansas,  
Missouri, Nebraska

901 Locust Street  
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Kansas City, MO 64108  
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April 24, 2009

Ms. Michelle McEnany  
Director, Office of Public Transit  
Iowa Department of Transportation  
800 Lincoln Way  
Ames, Iowa 50010

Re: Request for Buy America Non-Availability Waiver  
Accessible, Modified Mini-Vans

Dear Ms. McEnany:

This letter is the Federal Transit Administration's ("FTA") response to your correspondence, dated April 9, 2009, and the request contained therein for a non-availability waiver of the Buy America rule as applied to the procurement of accessible, modified mini-vans ("Mini-Vans"). FTA is granting your request as explained below.

#### The Facts of the Mini-Vans Purchase

Two (2) bids were received for this vehicle type and each offered model year 2009-Dodge Grand Caravan chassis that have a final assembly point in Canada. The Bidders were: Siebert Mobility offering a Dodge Grand Caravan modified by Braun Corporation and Thomas Bus Sales, Inc. offering a Dodge Grand Caravan which it would modify. Siebert Mobility was the low bidder. Both bidders submitted the necessary Buy America certifications for the Mini-Vans, and no bidder indicated that it could comply with the Buy America Act. Iowa Department of Transportation ("IDOT") provided the executed Certificates of Non-Compliance with Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations in 49 CFR 661.7. Thus, IDOT received responsive bids for only foreign-made Mini-Vans. Purchases of Mini-Vans are likely to exceed the \$100,000 simplified acquisition threshold because IDOT sub-recipients are expected to order approximately 21 vehicles. IDOT then requested a waiver of the Buy America Act based on non-availability.

#### Buy America Regulations Applied to the Facts of the Mini-Vans Purchase

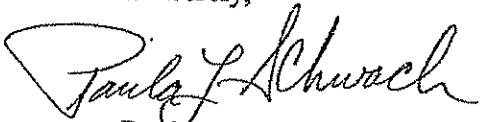
Because final assembly occurs outside of the United States, a waiver is necessary if: a) FTA funds are the source of payment for the vehicle purchase (49 CFR 661.5(d)(1)); and, b) if the simplified acquisition threshold of \$100,000 is exceeded (Appendix A to 661.7).

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IDOT received no responsive and responsible bids offering Mini-Vans manufactured in the United States. Therefore, pursuant to 49 CFR 661.7(c)(1), IDOT has established the presumption that the materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality to meet the described need, and FTA hereby grants IDOT's request for a non-availability waiver for Mini-Vans.

FTA notes that the April 2, 2009 Federal Register (74 F.R. 15048) includes notice of a request by Eldorado National of Kansas for a national, non-availability waiver for mini-vans. We are aware that IDOT provided comments on this notice supporting a waiver. FTA has not yet made a final determination on Eldorado National's request. This determination is limited to the facts presented in this letter and the Siebert Mobility bid.

Sincerely,



Paula L. Schwach  
Regional Counsel

Cc: E-files--series 9000/Iowa/IDOT/Buy America  
Legal Buy America File  
Jayme Blakesley, TCC  
Richard Wong, TCC

Cathy Monroe  
Joan Roeseler  
Reader File



# Iowa Department of Transportation

800 Lincoln Way, Ames, Iowa 50010

515-233-7879

Fax: 515-233-7983

April 9, 2009

Mokhtee Ahmad; Regional Administrator  
Federal Transportation Administration – Region VII  
901 Locust Street – Room 404  
Kansas City, MO 64106

**Subject:** Request for Buy America Waiver to Purchase ADA Compliant Ramp Access Minivans from the Lowest Responsive Bidder Pursuant to Letting 4261

Dear Administrator Ahmad:

*Mokhtee*

On behalf of the Iowa DOT and its Office of Public Transit (OPT), this letter conveys a formal request that you approve of a Buy America Waiver to permit Iowa public transit agencies to purchase ADA compliant, modified minivans, because no minivans meet FTA's Bus Testing Requirements that also currently meet the dual Buy America Requirements of having at least 60% domestic content and final assembly in the United States, as found at 49 U.S.C. 5323(j)(1) and 49 CFR 661.11. Until recently, two manufacturers GM and Cerberus, produced minivan models that had been modified to meet ADA requirements by final stage manufacturers and tested at the FTA's Bus Testing facility.

It is our understanding that only two Transit Vehicle Manufacturers have Altoona tested an ADA compliant modified minivan and both, Braun Corporation and Eldorado National -- have informed the Iowa DOT that: 1) GM has discontinued production of its minivan platform (formerly marketed as its Chevrolet Uplander, Pontiac Montana, and Saturn Relay models); and 2) Cerberus has shifted production of its Dodge Grand Caravan and Chrysler Town and Country minivan models to Windsor, Ontario, Canada. Prior to these production changes, minivans made by both GM and Cerberus had met both the "60% domestic content" and "final assembly in the U.S." Buy America criteria. Accordingly, several Final Stage Manufacturers performed engineering and made modifications to make minivans built on the Chrysler and GM platforms ramp accessible and ADA compliant, followed by Bus Testing, and other measures to satisfy FTA requirements.

### **Basis for Request**

On Wednesday, April 1, 2009, the Iowa DOT opened the two bids that were submitted in response to our Letting 4261 for ADA accessible minivans. Specifications under this letting were conveyed through direct e-mail and formal invitation to at least twenty-two (22) dealers and transit vehicle manufacturers that modify minivans to be accessible by persons with disabilities and might have the capacity to satisfy each of FTA's other requirements. In particular, the terms and conditions of Letting 4261 required that the vehicle meet the ADA ramp access, the Buy America and the Altoona Bus Testing provisions, as well as other requirements.

Evaluation of the two bids submitted, revealed that each vendor offers an Altoona tested, ADA compliant, ramp accessible minivan; but representatives for both TVM's have indicated in their respective bid documents that the minivan they have painstakingly engineered modifications to, have Altoona tested and have in current production is no longer domestically produced. Rather, both TVM's indicate that the

vehicle offered is based on a Dodge Grand Caravan model minivan that is presently only produced by Chrysler at its factory in Windsor, Ontario, Canada, and will therefore require a Buy America Waiver.

Extensive contacts that we have made with official representatives of other TVM's has led us to conclude that there is no Buy America compliant minivan that is currently in production that any domestic TVM has modified to meet both the ADA requirements and FTA's mandatory Bus Testing mandate.

#### **Detailed Request**

Consistent with FTA Circular 4220.1F and other guidance provided in FTA's Best Practices Procurement Manual, (BPPM), OPT is requesting that a Buy America Waiver be granted for Iowa's public transit systems to allow purchases of minivans from Siebert Mobility, the low bidder in our letting and a dealer for Braun Corporation, that modifies Grand Caravans for ADA accessibility at a domestic plant, located in Winamac, IN., even though final assembly of the base vehicle occurs outside the U.S. Since no ADA compliant modified minivan that has been Altoona Tested, also satisfies the dual final assembly in the U.S. and 60% or greater domestic content to meet Buy America requirements, conditions exist to allow you to grant a waiver, on the grounds that minivans that are suitable for ADA modifications are not produced in sufficient and reasonably available quantity or quality, a justification cited as a basis for granting a waiver in 49 U.S.C.(j) (2)(B), since no responsive bid was received from a responsible bidder in response to our Letting 4261, opened on 4/1/09, offering an ADA compliant minivan produced in the United States.

This waiver would allow Iowa DOT to authorize Iowa transit agencies to implement projects pending approval under the ARRA of 2009 and other grants the Iowa DOT has submitted under various FTA assistance programs, not to exceed a maximum quantity of 40 accessible minivans to be obligated on or before September 30, 2011.

#### **Rationale for Request Approval**

Under pending ARRA grants applications alone, the Iowa DOT has seven subrecipients needing to purchase one expansion and twenty replacement ADA compliant, ramp accessible minivans. The vehicles that are needing to be replaced have proven to be very fuel efficient and maneuverable. The agencies that have applied to replace existing ADA compliant minivans have determined that this type of vehicle is essential to their capability to cost effectively serve many disabled and elderly persons in their service areas. The predominant type of service provided with ramp accessible minivans is demand response. Agencies have determined that at least twenty of these vehicles have significantly exceeded FTA minimum useful life standards for four year vehicles and are appropriate to replace as a means of providing the general public transportation to work, supported work activities, medical services, shop for groceries and a host of other needs that are funded under, but not limited to, FTA's: JARC, New Freedom, Section 5310 and Section 5311 Programs.


ADA compliant, modified minivan vehicles are customarily used in shared ride, paratransit operations where it would be very wasteful to dispatch a larger bus that uses far more fuel. In certain locales, these vehicles are especially well matched to the user demand, and use far less fuel. For certain applications, an accessible minivan is considerably more cost effective than a 15 passenger van or a small bus that require a mobility aid user lift and other features to comply with ADA requirements. Ramp accessible minivans are well suited for serving a growing segment of trip demand, especially riders originating in certain low density areas of our state. For instance, they are especially useful to transport persons to appointments at distant medical clinics that are not easily grouped with requests of other passengers.

If this request is not approved, seven and perhaps more of Iowa's transit agencies would be required to seek additional funding to purchase larger and more expensive vehicles such as lift equipped, modified raised roof vans or cutaway van chassis small buses that would also involve increased operating costs over the life of these vehicles.

We therefore seek your favorable consideration of this waiver request, so that Iowa's transit agencies can continue to provide appropriate services in as economical a manner as possible.

If we can be of further assistance in justifying the basis for approving our waiver request don't hesitate to call or contact J.P. Golinvaux of my staff, at 515.233.7879.

Sincerely,

  
Michelle McEnany  
Director, Office of Public Transit

Enclosure

cc: Paula Schwach, FTA Regional Council

International Corporate Headquarters:

**The Braun Corporation**  
631 W. 11th Street  
P.O. Box 310  
Winamac, IN 46996 USA  
1-800-THE LIFT  
(574) 946-6153  
FAX: (574) 946-4670

[www.braunmobility.com](http://www.braunmobility.com)



Certificate of Non-Compliance with 49 U.S.C. 5323 (j)(2)(C)

"Buy America"

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: 3/19/09

Signature: Andy Brown

Company Name: The Braun Corporation

Title: Commercial Entervan Manager