



*A bold voice for transportation workers*

August 22, 2016

Mr. Brandon White  
Office of Railroad Policy and Development  
Federal Railroad Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**RE: Competitive Passenger Rail Service Pilot Program  
Notice of Proposed Rulemaking  
Docket No. FRA-2016-0023  
RIN 2130-AC60**

Dear Mr. White,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write to comment on FRA's Notice of Proposed Rulemaking (NPRM) which seeks to implement the Competitive Passenger Rail Service Pilot Program. As the FRA notes, Section 11307 of the FAST Act (codified at 49 USC 24711) has directed the agency to solicit bids from non-Amtrak entities to replace current Amtrak service on up to three long-distance routes and that this NPRM is a result of that mandate. By way of background, TTD consists of 32 affiliated unions representing workers in all modes of transportation, including employees working on and in conjunction with existing passenger rail routes, who would be impacted by this proceeding.<sup>[1]</sup>

TTD has long maintained that Amtrak and its dedicated and professional workforce is in the best position to provide intercity passenger rail service and if properly supported and funded can fulfill this mission. We have long rejected the notion that the magical elixir for passenger rail is the introduction of private entities that somehow believe they can provide rail service more efficiently than Amtrak and return a profit to shareholders. The reality is that these for-profit schemes almost always contemplate degrading service, abrogating labor standards or collective bargaining obligations, or failing to abide by rail specific statutes such as railroad retirement. We urge the FRA to reject this approach as it considers the Competitive Passenger Rail Service Pilot Program.

To the degree that this pilot program results in entities other than Amtrak providing rail service, it is imperative that FRA ensure that passenger service is not jeopardized and that workers and jobs are protected as mandated by the statute. While there are several aspects of the NPRM that seek to accomplish this objective, there are improvements and clarification that need to be made. Not only will the changes we are requesting protect workers and passengers as mandated by Congress, but they will ensure that any competing rail service cannot undercut Amtrak by circumventing important laws and protections that currently apply to Amtrak and its workers.

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<sup>[1]</sup> Attached is a complete list of TTD's 32 affiliated unions.

**Transportation Trades Department, AFL-CIO**

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



At the outset, we note that Section 11307 clearly states that any winning bidder under the Pilot Program "...shall be subject to the grant conditions under section 24405 [of title 49]". We are pleased that FRA has adopted this requirement in its proposed rule and stated in proposed Section 269.13 that the contract between the FRA and the winning bidder must "subject the winning bidder to the grant conditions established in 49 USC 24405." We are concerned however that there is no explanation in the preamble or elsewhere in the proposed rule that specifies the requirements in Section 24405 or how a winning bidder will comply with these important mandates. Given the scope, diversity and importance of the requirements in 24405, we urge the FRA to provide greater guidance to prospective bidders and other stakeholders on how these requirements will be implemented.

#### **4R Act Rail Employee Protections**

It is clear that the statute requires that employees impacted by the implementation of this pilot program are entitled to the equivalent of the 4R Act rail employee protections. As noted above, each winning bidder must comply with the requirements in 49 USC 24405. Section 24405(c)(2)(B) clearly states that applicants must comply with "the protective arrangements that are the equivalent to the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 USC 836) with respect to employees affected by actions taken in connection with the project..." While the FRA acknowledges that Section 24405 applies to this program, there is no mention in the NPRM of how FRA will ensure that winning bidders comply with this specific mandate and ensure that rail workers receive the protections they are entitled to under the statute. The FRA should amend its proposed rule to specifically require that any winning bidder provide these protections. As part of this effort the FRA should issue guidance on these protections and issue model protections tailored to this Pilot Program. The guidance should also specify what responsibilities winning bidders will have to employees under the statute and that these costs are anticipated in any petition filed with FRA to provide rail service under the pilot program.

#### **Hiring Preferences**

Proposed Section 269.15(c) states that "the winning bidder must provide hiring preferences to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan the winning bidder submits." We note that this requirement is mandated in 24711(c)(3). We are concerned however that there is no mention or requirement in the proposed rule for winning bidders to comply with 49 USC 24405(d) that provides additional and more specific protections for employees. This section requires any entity that takes over service from Amtrak to enter into an agreement with the authorized bargaining agent or agents to protect adversely affected employees. Specifically, this agreement must provide priority hiring in accordance with the employee's seniority; it must establish a procedure for notifying employees of such positions; it must establish a procedure for such an employee to apply for positions and it must establish rates of pay, rules and working conditions. The FRA should amend its proposed rule at 269.15(c) to adopt these procedures and requirements.



The FRA must ensure that winning bidders comply with both the letter and spirit of the hiring preference that Congress has provided. Winning bidders should not be allowed to simply offer former Amtrak employees an initial interview in order to comply with the statute with no intention of actually hiring these workers. Amending the regulations as suggested and careful monitoring by FRA will help ensure that true hiring preference is being offered to otherwise displaced workers.

### **Application of Rail Laws**

Both the statute (49 USC 24711(c)(2), and the proposed regulation (Section 269.15(b)), state that the employees, except as provided under a collective bargaining agreement, an eligible petitioner uses in its operation shall be considered an employee of that eligible petitioner and subject to the applicable federal laws and regulations governing similar crafts and classes of employees of Amtrak. As the FRA is well aware, Amtrak and its employees are covered by a number of rail specific statutes including the Railway Labor Act, the Railroad Retirement Act and the Railroad Unemployment Insurance Act. Taken together, these laws and other rail specific statutes ensure that workers have the right to engage in collective bargaining and are covered by a retirement and occupational disability program that is designed for the rail sector. By requiring employees of any new provider of rail service to be “subject to the applicable federal laws and regulations governing similar crafts and classes of employees of Amtrak”, it is clear that Congress intended that these and other statutes apply. In fact, 49 USC 24405(b) reinforces this point and requires that a person that conducts rail operations under that section shall be considered a rail carrier as defined in 10102(5) and any other statute that adopts that definition including those cited above. The FRA should amend its regulations to specifically require that any winning bidder be subject to the same rail laws that Amtrak is covered by and as directed by Section 24711.

### **Prevailing Wage**

The FRA must ensure that any construction work performed by contractors of a winning bidder is compliant with Davis-Bacon prevailing wage requirements. Again, winning bidders are required to comply with the grant condition in Section 24405 which includes the Davis-Bacon (24405(c)(2)(A)) rules that Amtrak and other recipients of passenger rail funding have long been covered by and must follow. For almost 80 years, Davis-Bacon has required federal-project contractors to pay workers current rates in the community where the project is under construction. This ensures that contractors cannot secure projects funded by federal dollars and then import lower-wage workers into communities and drive down local wages. Equally as important, Davis-Bacon promotes quality infrastructure, cost-effective construction and greater productivity from the workforce.

### **Buy America**

TTD notes that through 24405(a), bidders wishing to perform construction or purchase equipment are subject to Buy America requirements governing the use of steel, iron, and manufactured goods. These requirements ensure that federal investments in transportation projects are leveraged to achieve the greatest possible economic impact and sustain domestic manufacturing. In

implementing this pilot program it is critical that tax-payer money given to a potential new carrier through the operating subsidy be subject to FRA Buy American standards. These standards must apply to any rolling stock purchases as well as any materials or manufactured goods used in construction projects. FRA should ensure that bidder submissions under this program will comply with Buy American standards and should be prepared to ensure compliance by any winning bidder.

### **Maintaining Current Service**

We urge the FRA to amend its regulations to more specifically require that all aspects of passenger rail service are maintained if an entity other than Amtrak provides service under the pilot program. We recognize that proposed Section 269.13(b)(4) requires a winning bidder to provide service that “is no less frequent, nor over a shorter distance, than Amtrak.” We would ask that this mandate be further clarified to ensure that current stops and station service is maintained. Proposed section 269.13(b)(5) states that a winning bidder must comply with performance standards that FRA may require but must meet or exceed the performance required of or achieved by Amtrak. The FRA should explain in more detail what these performance standards are so that the winning bidder can be held accountable and that service will not deteriorate. As part of this effort the FRA should amend its regulations at Section 269.13(b) to require that any winning bidder maintain or improve the food and beverage service on board the Amtrak train that the winning bidder seeks to take over. Food and beverage service is an integral and important component of the long-distance train experience and it should not be subject to removal or degradation if a new entity takes over a route. Congress specifically mandated that “performance standards” be maintained under the pilot program – the accessibility of food and beverage for passengers traveling hundreds of miles must be considered a component of these performance standards.

### **Federal Funding for “Winning Bidders”**

As set by statute, winning bidders are eligible to an operating subsidy not to exceed 90 percent in effect for the specific route the bidder seeks to replace. The FRA states that it is proposing that the operating subsidy will not be granted unless it is consistent with the applicable annual appropriation act. It is unclear exactly what FRA is contemplating. At a minimum, we would suggest that if Congress does not provide the level of funding to Amtrak that is at least the amount authorized by the FAST Act then the operating subsidy should be cut by that same percentage.

We appreciate the opportunity to comment on the FRA’s NPRM on the Competitive Passenger Rail Service Pilot Program, and hope that the FRA will incorporate the suggested changes of transportation labor as it moves forward with this program.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a stylized, looping flourish at the end.

Edward Wytkind  
President





**Transportation Trades Department, AFL-CIO**  
*A bold voice for transportation workers*

***TTD MEMBER UNIONS***

Air Line Pilots Association (**ALPA**)  
Amalgamated Transit Union (**ATU**)  
American Federation of Government Employees (**AFGE**)  
American Federation of State, County and Municipal Employees (**AFSCME**)  
American Federation of Teachers (**AFT**)  
Association of Flight Attendants-CWA (**AFA-CWA**)  
American Train Dispatchers Association (**ATDA**)  
Brotherhood of Railroad Signalmen (**BRS**)  
Communications Workers of America (**CWA**)  
International Association of Fire Fighters (**IAFF**)  
International Association of Machinists and Aerospace Workers (**IAM**)  
International Brotherhood of Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers and Helpers (**IBB**)  
International Brotherhood of Electrical Workers (**IBEW**)  
International Longshoremen's Association (**ILA**)  
International Organization of Masters, Mates & Pilots, ILA (**MM&P**)  
International Union of Operating Engineers (**IUOE**)  
Laborers' International Union of North America (**LIUNA**)  
Marine Engineers' Beneficial Association (**MEBA**)  
National Air Traffic Controllers Association (**NATCA**)  
National Association of Letter Carriers (**NALC**)  
National Conference of Firemen and Oilers, SEIU (**NCFO, SEIU**)  
National Federation of Public and Private Employees (**NFOPAPE**)  
Office and Professional Employees International Union (**OPEIU**)  
Professional Aviation Safety Specialists (**PASS**)  
Sailors' Union of the Pacific (**SUP**)  
Sheet Metal, Air, Rail and Transportation Workers (**SMART**)  
SMART-Transportation Division  
Transportation Communications Union/ IAM (**TCU**)  
Transport Workers Union of America (**TWU**)  
**UNITE HERE!**  
United Mine Workers of America (**UMWA**)  
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service  
Workers International Union (**USW**)

*These 32 labor organizations are members of and represented by the TTD*

