Audit of WMATA’s Buy America Contract Award and Oversight Process

OIG 17-07
May 22, 2017
SUBJECT: Audit of WMATA’s Buy America Contract Award and Oversight Process (OIG 17-07)  

DATE: May 22, 2017

FROM: OIG – Geoff Cherrington /S/

TO: GMGR – Paul Wiedefeld

The attached Final Report, entitled Audit of WMATA’s Buy America Contract Award and Oversight Process, presents the results of our audit. The audit objective was to determine whether WMATA had adequate internal controls and oversight over its Buy America procurements for rolling stock. WMATA staff either concurred, substantially concurred, or partly concurred with the overall OIG draft report.

Please provide information on actions taken or planned on each of the recommendations within 30 days of the date of this report. OIG intends to make the final report publicly available, including the written comments that you provided.

We appreciate the cooperation and assistance extended by your staff during the audit. Should you or your staff have any questions, please contact me or Stephen Dingbaum.

Attachment

cc: IBOP - J. Kuo  
COUN - P. Lee  
INCP - E. Christensen
Audit of WMATA’s Buy America Contract Award and Oversight Process

What We Found

Internal controls and oversight over Buy America procurements for rolling stock require improvement. While the Washington Metropolitan Area Transit Authority (WMATA) has Buy America contract award and oversight processes for rolling stock procurements, compliance with the Buy America Act is at risk due to (1) a lack of Buy America oversight (2) Buy America pre-award and post-delivery audits not being performed for several contracts, and (3) evidence of required Buy America Certifications not being maintained for several contracts.

As a result, procurements totaling $68 million are not compliant with Buy America regulations and procurements totaling $517 million are not aligned with the Federal Transit Administration’s (FTA) best practice guidance for Buy America compliance. Non-compliance can result in immediate suspension, withholding, or repayment of Federal financial assistance from FTA or other appropriate actions. WMATA’s lack of strong oversight of Buy America purchases also increases the risk of potential manufacturer non-compliance with Buy America domestic content and assembly requirements. This can lead to vehicle disassembly and refurbishment to bring the vehicles into compliance with Buy America content provisions, delivery delays and increased costs.

Management’s Response

Management concurred, substantially concurred, or partly concurred with our findings and has agreed to implement all of our recommendations. Corrective actions will be completed in FY2018.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABBREVIATIONS AND ACRONYMS</td>
<td>1</td>
</tr>
<tr>
<td>BACKGROUND</td>
<td>2</td>
</tr>
<tr>
<td>AUDIT OBJECTIVE AND RESULTS</td>
<td>6</td>
</tr>
<tr>
<td>FINDINGS AND RECOMMENDATIONS:</td>
<td></td>
</tr>
<tr>
<td>Finding 1 – Lack of Buy America Program Oversight</td>
<td>7</td>
</tr>
<tr>
<td>Finding 2 – Lack of Buy America Audits</td>
<td>9</td>
</tr>
<tr>
<td>Finding 3 – Missing Buy America Certifications</td>
<td>12</td>
</tr>
<tr>
<td>CONSOLIDATED LIST OF RECOMMENDATIONS</td>
<td>18</td>
</tr>
<tr>
<td>APPENDIXES:</td>
<td></td>
</tr>
<tr>
<td>A. Objective, Scope and Methodology</td>
<td></td>
</tr>
<tr>
<td>B. Management’s Response from John T. Kuo</td>
<td></td>
</tr>
<tr>
<td>ABBREVIATION</td>
<td>DESCRIPTION</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>BENG</td>
<td>Bus Engineering</td>
</tr>
<tr>
<td>BMNT</td>
<td>Office of Bus Maintenance</td>
</tr>
<tr>
<td>CENV</td>
<td>Vehicle Program Services</td>
</tr>
<tr>
<td>CFR</td>
<td>Code of Federal of Regulations</td>
</tr>
<tr>
<td>CLM</td>
<td>Contract Lifecycle Management System</td>
</tr>
<tr>
<td>COSO</td>
<td>Committee of Sponsoring Organization of the Treadway Commission</td>
</tr>
<tr>
<td>COTR</td>
<td>Contracting Officer’s Technical Representative</td>
</tr>
<tr>
<td>COUN</td>
<td>General Counsel</td>
</tr>
<tr>
<td>FAST</td>
<td>Fixing America’s Surface Transportation Act</td>
</tr>
<tr>
<td>FMVSS</td>
<td>Federal Motor Vehicle Safety Standards</td>
</tr>
<tr>
<td>FTA</td>
<td>Federal Transit Administration</td>
</tr>
<tr>
<td>FY</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>GAO</td>
<td>Government Accountability Office</td>
</tr>
<tr>
<td>OIG</td>
<td>Office of Inspector General</td>
</tr>
<tr>
<td>P/I</td>
<td>Policy/Instruction</td>
</tr>
<tr>
<td>PO</td>
<td>Purchase Order</td>
</tr>
<tr>
<td>PPM</td>
<td>Procurement Procedures Manual</td>
</tr>
<tr>
<td>PRMT</td>
<td>Office of Procurement and Materials</td>
</tr>
<tr>
<td>RFP</td>
<td>Request for Proposal</td>
</tr>
<tr>
<td>U.S.</td>
<td>United States of America</td>
</tr>
<tr>
<td>WMATA</td>
<td>Washington Metropolitan Area Transit Authority</td>
</tr>
</tbody>
</table>

The Surface Transportation Assistance Act of 1982 is a comprehensive transportation funding and policy act and is the authority for the “Buy America” provisions. The Code of Federal Regulation (CFR) 49 Part 661 and 663, called the "Buy America" provisions or Buy America Act applies to third-party procurements by FTA grant recipients, which includes mass-transit-related procurements. It established requirements intended to give preference to the use of domestically produced materials on any procurements funded at least in part by federal funds. Implementation of the requirements is regulated by the FTA.

FTA generally defines rolling stock in the Buy America regulations to include transit vehicles such as buses, railcars, locomotives, trolley cars, trolley buses, vans, ferryboats, vehicles used for support services, train control, communications, and traction power equipment.

As a condition to receiving FTA grant funds for rolling stock procurements, WMATA must certify compliance with Buy America and its pre-award and post-delivery audit requirements. WMATA must either verify that the procured vehicles will contain more than 60 percent domestic content, by cost, and final assembly of the vehicles will take place in the United States or obtain a FTA waiver letter exempting the procurement from Buy America requirements.

Current Buy America Requirements

For Fiscal Years (FYs) 2016 and 2017, FTA’s Buy America regulation (49 CFR Part 661) requires that rolling stock undergo final assembly in the US, and that 60 percent of the vehicle’s components and sub-components be manufactured in the United States. When replacement parts are acquired, however, components must be manufactured in the United States, but replacement sub-components may come from any source, foreign or domestic. In addition, Buy America requirements regarding foreign and domestic content do not apply to foreign sourced spare parts for rolling stock whose total cost is 10 percent or less of the overall project contract cost procured as part of the same contract for the major capital item.

FTA’s Buy America regulation (49 CFR Part 663) requires pre-award and post-delivery audits when a transit agency receives Federal financial assistance to purchase rolling stock. This part applies to a recipient purchasing rolling stock to carry passengers in revenue service. For the pre-award audit, the auditor verifies that the pre-award Buy America Certifications, Purchaser’s Requirements Certifications, and the manufacturer’s Federal Motor Vehicle Safety Standards (FMVSS) Certifications are completed and are appropriately supported. For the post-delivery audit, the auditor verifies that the post-delivery Buy America Certification, Purchaser’s Requirements Certification, and FMVSS Certification are completed and are appropriately supported.
Legislative Updates

Effective October 1, 2015, the Fixing America’s Surface Transportation (FAST) Act amended and updated Buy America requirements. Key updates include:

- **Phased Domestic Content Percentage Increase:** This change increased the domestic content percentage requirement for rolling stock in phases as follows: FY 2016 and FY 2017 – more than 60 percent, FY 2018 and FY 2019 – more than 65 percent, and FY 2020 & beyond – more than 70 percent.

- **Small Purchases Waiver:** The general public interest waiver exempting “small purchases” from Buy America requirements was increased from $100,000 to $150,000.

- **Waiver Process:** If a request for Buy America waiver is denied, the FAST Act requires the FTA to certify that the steel, iron, or manufactured good is produced in the US in a sufficient and reasonably available amount and is of satisfactory quality. The FTA must also identify a list of known manufacturers in the US from which the item can be obtained.

- **Body Shell:** If rolling stock vehicle frames or car shell components are not produced in the U.S., and if the average cost of the rolling stock vehicle is more than $300,000, the FAST Act permits the inclusion of the cost of steel or iron that is produced in the U.S. and included in the frames or car shells in the calculation of domestic content in the rolling stock vehicle. This provision changes the current calculation of component domestic content.

**Buy America FTA Implementation Guidance**

To guide transit agencies on implementing Buy America requirements, the FTA prepared and posted on their website the “Buy America Handbook: Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements.” The purpose of this handbook is to assist recipients, auditors, rolling stock manufacturers, and subcontractors and suppliers in understanding and correctly applying FTA’s pre-award and post-delivery audit requirements for rolling stock vehicle purchases.

---

1 FTA’s 09/01/2016 “Notice of Policy on the Implementation of the Phased Increase in Domestic Content Under the Buy America Waiver for Rolling Stock and Notice of Public Interest Waiver of Buy America Domestic Content Requirements for Rolling Stock Procurement in Limited Circumstances.”

WMATA Rolling Stock Procurements

The contractual scope for this audit consisted of federally funded rolling stock revenue vehicle procurements awarded from July 1, 2010 to June 30, 2016. The aggregate dollar amount of contract awards for this period was $1.40 billion, as illustrated in the following chart:

**WMATA Revenue Vehicle Rolling Stock Procurements (Contract $):**

![Pie chart showing the breakdown of procurement types and amounts]

**Current WMATA Buy America Roles and Responsibilities:**

Responsible parties within WMATA for aspects of Buy America compliance follow:

- **The Office of Procurement and Materials (PRMT)** – procures rolling stock, including the preparation of Buy America waiver requests, communicates Buy America Certification requests, and reviews and files completed pre- and post-award Buy America Certifications. At the request of PRMT, an independent party conducts pre-award and post-delivery audits of rolling stock manufacturer’s compliance with the Buy America requirements. Within WMATA these audits are usually conducted by the OIG.

---

3Manufacturer’s Certification of Buy America Compliance or Non-Compliance, Pre-Award Buy America Certification, Pre-Award Purchaser’s Requirement Certification, Pre-Award FMVSS Certification and exemptions, Intermediate/Post-Award Buy America Certifications, Intermediate/Post Award Purchaser’s Requirements Certification, and Post-Award FMVSS Certification and exemptions.
- The Office of General Counsel (COUN) – reviews of letters requesting waivers of Buy America requirements for rolling stock procurements, forwards such waiver requests to FTA, and completes related Pre-Award Buy America Exemption Certifications.

- The Program Office, Contracting Officer’s Technical Representative (COTR) – at the request of PRMT, the Program Office COTR is responsible for completion of the Pre-Award Purchaser’s Requirements Certification, Post-Award Purchaser’s Requirements Certification, and the Post-Delivery FMVSS Certification.

Source: WMATA Photo Archives. Title: 7000 Commissioning Shop for new manufactured Rail Cars that were delivered, tested, and were required to comply with Buy America.
AUDIT OBJECTIVE AND RESULTS

Audit Objective

Determine whether WMATA has adequate internal controls and oversight over its Buy America procurements for rolling stock.

Audit Results

Internal controls and oversight over Buy America procurements for rolling stock require improvement. While WMATA has Buy America contract award and oversight processes for rolling stock procurements, compliance with the Buy America is at risk due to:

- A Lack of Buy America Program Oversight,
- Buy America Pre-Award and Post-Delivery Audits not being performed for several contracts, and
- Evidence of required Buy America Certifications not being maintained for several contracts.

As a result, procurements totaling $68 million are not compliant with Buy America regulations, and procurements totaling $517 million are not aligned with FTA best practice guidance for Buy America compliance.\(^4\) Non-compliance can result in immediate suspension, withholding, or repayment of Federal financial assistance from FTA or other appropriate actions. WMATA’s lack of strong oversight of Buy America purchases also increases the risk of potential manufacturer non-compliance with Buy America domestic content and assembly requirements. This can lead to vehicle disassembly and refurbishment to bring the vehicles into compliance with Buy America content provisions, delivery delays and increased costs.

---

\(^4\)The 2015 and 2017 FTA Buy America Handbooks are best practices (non-binding guidance documents) for use by auditors as well as recipients, vendors, and interested members of the public.
FINDINGS AND RECOMMENDATIONS

Finding 1 – Lack of Buy America Program Oversight (Risk – High)\(^5\)

WMATA does not effectively oversee Buy America compliance, as evidenced by deficiencies in Buy America audit and certification requirements (see findings 2 and 3). Both the Committee of Sponsoring Organizations of the Treadway Commission’s (COSO’s\(^6\)) and the Government Accountability Office (GAO\(^7\)) internal control frameworks require management to assign responsibility for achieving the entity’s objectives. One of WMATA’s objectives for rolling stock procurements is to comply with Buy America. The reason Buy America oversight is not effective was because accountability for Buy America was not established, policies and procedures were not updated, and there was a lack of training. As a result, several contracts are currently non-compliant with the Buy America Act or FTA best practices for Buy America Compliance.

What Is Required

According to the COSO and GAO internal control frameworks, to achieve the entity’s objectives, management assigns responsibility and delegates authority for key roles throughout the entity. Management determines what level of authority each key role needs to fulfill a responsibility. Management delegates authority only to the extent required to achieve the entity’s objectives.

What We Found

- **Accountability for Buy America Is Not Established** – A central Buy America Program Coordinator is not formally established for Buy America compliance. This coordinator would be accountable for Buy America compliance and ensure key personnel understand their roles and responsibilities for the various aspects of the Buy America program.

- **Policies and Procedures are not Updated** – WMATA’s Buy America guidance and procedures in the Procurement Procedure Manual (PPM) and Policy/Instruction (P/I) contain guidelines for Buy America, but do not have clear roles and responsibilities for certification requests, specific procedures for monitoring and documenting certifications, and procedures for waiver processes.

\(^5\)Findings rated as High, Medium, and Low risk require management corrective actions to strengthen internal processes and provide for more effective and efficient operations.

\(^6\)Committee of Sponsoring Organizations of the Treadway Commission: 2013 Internal Control – Integrated Framework

\(^7\)Government Accountability Office: 2014 Standards of Internal Control in the Federal Government
No Comprehensive Training – While PRMT contractor procurement violation training includes an overview of Buy America provisions, comprehensive Buy America training detailing audit and certification requirements, and related roles, responsibilities and procedures for ensuring compliance is not provided to other departments, such as the Program Offices, involved in Buy America.

Why This Occurred

While PRMT has a Policy Management Team responsible for contract compliance guidance, there is no senior level official responsible for overall Buy America program oversight, coordination, policy and procedure updates, and training. No one in a senior position could explain why no single person was responsible for Buy America compliance.

Why This Is Important

Lack of Buy America program oversight, including effective monitoring of internal controls to ensure required Buy America audits are performed and certifications are obtained, contributed to non-compliance with Buy America regulations and FTA best practices for Buy America compliance for aggregate contract amounts of $68 and $517 million, respectively.\(^6\)

Recommendations:

We recommend the General Manager/Chief Executive Officer:

1. Assign a Senior Level Official as Buy America Program Coordinator responsible for Buy America compliance, coordination, policies, and training. (Action: Chief of Internal Business Operations) (Risk – High)

2. Include adherence to Buy America regulations in relevant business/employee performance plans. (Action: Chief of Internal Business Operations) (Risk – Medium)

\(^6\)The aggregate amounts represent contracts that either had missing or incomplete Buy America certifications from a sample of 31 contracts.
Finding 2 – Non-performance of Buy America Pre-Award and Post-Delivery Audits (Risk – High)

Required Buy America Pre-Award Audits, Post-Delivery Audits, and recommended Intermediate Post-Delivery Audits were not performed for all federally funded rolling stock revenue vehicle procurements:

- No Pre-Award Audits for 3 of 5 contracts reviewed
- No Post Delivery Audits for 1 of 4 contracts reviewed
- No Intermediate Post-Delivery audits for all contracts reviewed

The audits were not performed because roles and responsibilities for monitoring and communicating audit requirements and requests were not established, PRMT staff turnovers, and inadequate training. As a result, procurements totaling $61 million are not compliant with Buy America regulations and procurements totaling $381 million are not aligned with FTA best practice guidance for Buy America compliance.⁹

⁹The aggregate amounts represent missing Buy America Pre-Award, Post-Delivery, and Intermediate Post-Delivery Audits from a sample of 5 contracts, which comprise of federally funded revenue vehicle rolling stock procurements from FY2011-2016.
What Is Required

Pre-Award Audit Requirements:

According to CFR 49 Part 663, a recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit is completed before the recipient enters into a formal contract for the purchase of such rolling stock. A pre-award audit consists of verifying the Buy America Pre-Award Certification is complete, the Pre-Award Purchaser’s Requirements Certification is complete, and the Manufacturer’s Pre-Award FMVSS Certification is complete.

Post-Delivery Audit Requirements:

CFR 49 Part 663 requires recipients purchasing revenue service rolling stock with FTA funds to ensure that a post-delivery audit is completed before title to the rolling stock is transferred to the recipient. A post-delivery audit consists of verifying the Post-Delivery Buy America Certification is complete, the Post-Delivery Purchaser’s Requirements Certification is complete, and the Post-Delivery FMVSS Certification is complete.

Intermediate Post-Delivery Audit Requirements:

Per the 2015 FTA Buy America Handbook – “Conducting Pre-Award and Post-Delivery Audit for Rolling Stock Procurements,” Section 5.1.3, in certain cases, particularly on large orders with multi-year delivery schedules, recipients may find it appropriate to conduct intermediate audits to minimize the risk that subsequent vehicles may not meet Buy America requirements.

This guidance was amended in FTA’s 2017 Buy America Handbook, Section 5.3.2, (effective March 21, 2017) that states “When a contract provides for multiple deliveries and the post-delivery periods are scheduled at substantially different time intervals, such as 6 months or 1 year apart, the recipient must complete a post-delivery audit for each period. This does not mean that a separate audit is required for each vehicle within a post-delivery period.”

The 2015 and 2017 FTA Buy America Handbooks are best practices (non-binding guidance documents) for use by auditors as well as recipients, vendors, and interested members of the public.
What We Found

At least seven required or recommended audits have not been conducted.

- **Missing Pre-Award Buy America Audits** - For 3 of 5 contracts reviewed, there was no evidence an independent party performed the Buy America Pre-Award Audit. The aggregate value of the three non-compliant contracts totaled $61 million.

- **Missing Post-Delivery Buy America Audits** - For 1 of 4 contracts reviewed, there was no evidence an independent party performed the Buy America Post-Delivery Audit for the initial vehicle order. The value of the non-compliant contract was $26.8 million.

- **Missing Intermediate Post-Delivery Buy America Audits** - For all 3 contracts reviewed, there was no evidence an independent party performed the Intermediate Buy America Post-Delivery Audit for subsequent vehicle deliveries. The aggregate value of contracts that did not align with FTA guidance for Intermediate Post Delivery Audits totaled $391.5 million.\(^1\) ($294 million relates to the 7000 series railcars).

Why This Occurred

The following instances contributed to the conditions cited in the finding:

- **Responsibility for Buy America Audit Requests Not Established** – WMATA’s PPM and Buy America P/I (8.10/0) do not specifically state who is responsible for monitoring and communicating Pre-Award and Post-Delivery Buy America Audit requirements and requests.

- **Turnover in PRMT Department** – Due to turnover of key PRMT personnel from FY2011 to FY2016, including the Chief Procurement Officer and numerous procurement managers and administrators, inconsistent monitoring occurred for existing contracts.

- **No Comprehensive Training and Cross-Training** – With the transfer of contract monitoring responsibilities from exiting personnel to new personnel, Buy America specific cross-training of the new personnel did not occur. In addition, comprehensive Buy America training detailing audit and certification requirements, and related roles, responsibilities and procedures for ensuring compliance was not provided, as WMATA does not offer such training.

\(^1\)Estimate based on 50 percent of delivered value of vehicles under contracts that provide for multiple deliveries with post-delivery periods scheduled at substantially different time intervals.
Rolling stock vehicle procurements totaling $61 million are not compliant with Buy America regulations, and procurements totaling $381 million are not aligned with FTA best practice guidance for Buy America compliance.\textsuperscript{11} Non-compliance can result in immediate suspension, withholding, or repayment of Federal financial assistance from FTA or other appropriate actions. Non-performance of required audits also increases the risk of potential manufacturer non-compliance with Buy America domestic content and assembly requirements that can lead to vehicle disassembly and refurbishment, delivery delays and increased costs.

**Recommendations:**

We recommend the General Manager/Chief Executive Officer:

3. Ensure required Buy America Pre-Award, Post-Delivery, and Intermediate Post-Delivery Audits are conducted. (Action: Chief of Internal Business Operations) (*Risk – High*)

4. Develop comprehensive Buy America training and ensure appropriate personnel are cross-trained. (Action: Chief of Internal Business Operations) (*Risk – Medium*)

**Finding 3 – Missing Buy America Certifications (*Risk – High*)**

Forty required certifications were missing or inadequately supported in the contracts reviewed during this audit. This occurred because of insufficient contract monitoring, unclear roles and responsibilities for performing and documenting certification requests, and request for proposal (RFP) templates do not require documentation to support certifications. As a result, procurements totaling $68 million are not compliant with Buy America regulations, and procurements totaling $222 million do not align with FTA best practices for Buy America compliance.\textsuperscript{12}

\textsuperscript{11}The aggregate amounts represent missing Buy America Pre-Award, Post-Delivery, and Intermediate Post-Delivery Audits from a sample of 5 contracts, which comprise of federally funded revenue vehicle rolling stock procurements from FY2011-2018.

\textsuperscript{12}The aggregate amounts represent either missing or incomplete Buy America certifications from a sample of 31 contracts.
What Is Required

Manufacturer’s Certification Requirements:

According to CFR 49 Part 661.12, if buses or other rolling stock are being procured with FTA grant funds, the appropriate certificate is required to be completed and submitted by the bidder (manufacturer) during the RFP process.

Also, according to the 2015 FTA Buy America Handbook, the Transit Agency (recipient) should maintain on file the manufacturer’s documentation, which includes:

- The manufacturers certificate of compliance or non-compliance with Buy America rolling stock requirements,
- A list of vehicle components and sub-components by manufacturer or supplier, their country of origin, and costs either as a dollar figure or percentage (domestic content worksheet),
- The proposed final assembly site location,
- A description of activities that will take place at final assembly, and
- The total proposed cost of final assembly.

Pre-Award Purchaser’s Requirements Certification:

CFR 49 Part 663 states, “The Transit Agency (recipient), should have on file the following for the Pre-Award Purchaser’s Requirements Certification:

- The rolling stock the recipient is contracting for is the same product described in the purchaser’s solicitation specification; and
- The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient’s specification set forth in the recipient solicitation.”

Post-Delivery Purchaser’s Requirements Certification:

According to CFR 49 Part 663, the Transit Agency (recipient), should have an independent resident inspector not from the manufacturer at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and complete a report on the manufacture of such rolling stock that contains the following:

- An accurate record of all vehicle construction activities,
- Addresses how the construction and operation of the vehicles fulfill the contract specifications, and
A summary of visual inspections and road testing of the delivered vehicles and evidence that the vehicles meet the contract specifications.

**FVMSS Certifications:**

CFR 49 Part 663.41 requires that motor vehicles subject to FMVSS (i.e. Buses and Para-Transit Vans), the Transit Agency (recipient) shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer’s self-certification information that the vehicle complies with FMVSS.

Also, according to the 2015 and 2017 FTA Buy America Handbooks, the Pre-Award and Post-Delivery FMVSS Certifications should contain the following information:

- Title: Pre-Award FMVSS Compliance Certification,
- Transit agency’s name,
- Vendor’s name,
- Number and description of vehicles, and
- Statement of compliance with FMVSS.

### What We Found

Forty required certifications were missing or inadequately supported in the contracts reviewed during this audit, as follows:

**Table 1: Missing or Inadequately Supported Buy America Certifications**

<table>
<thead>
<tr>
<th>CONDITION</th>
<th>CONTRACTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Manufacturer’s Certifications</td>
<td>8</td>
</tr>
<tr>
<td>Partial Manufacturer’s Certification</td>
<td>19</td>
</tr>
<tr>
<td>No Pre-Award Purchaser’s Requirement</td>
<td>2</td>
</tr>
<tr>
<td>No Post-Award Purchaser’s Requirement</td>
<td>1</td>
</tr>
<tr>
<td>No Intermediate Post-Delivery Purchaser’s Requirements</td>
<td>1</td>
</tr>
<tr>
<td>Incomplete Post-Delivery Purchaser’s Requirements</td>
<td>1</td>
</tr>
<tr>
<td>No Pre-Award FMVSS Certification</td>
<td>1</td>
</tr>
<tr>
<td>Incomplete Pre-Award FMVSS Certification</td>
<td>3</td>
</tr>
<tr>
<td>No Post-Delivery FMVSS Certification</td>
<td>1</td>
</tr>
<tr>
<td>Incomplete Post-Delivery FMVSS Certification</td>
<td>2</td>
</tr>
<tr>
<td>No Intermediate Post-Delivery FMVSS Certification</td>
<td>1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>40</td>
</tr>
</tbody>
</table>
Details of the missing or inadequately supported certifications are listed below:

**Manufacturer’s Certifications:**

- Missing Buy America Manufacturer’s Certification: 8 of 31 contract files did not have a completed Manufacturer’s Certification in the contract file. The aggregate amount of the non-compliant contracts were $47.3 million.

- Partial Buy America Manufacturer’s Certification: 19 of 31 contract files contained the Manufacturer’s Certification, but it did not contain adequate support for the certification such as evidence of domestic content, evidence of proposed final assembly site location, evidence of description of activities that will take place at final assembly, or evidence of total proposed cost of final assembly. The aggregate amount of contracts that did not align with FTA best practice guidance for Buy America compliance were $143.3 million.

**Purchaser’s Requirements Certifications:**

- Missing Pre-Award Purchaser’s Requirements Certification: For 2 of 5 contracts reviewed, there was no evidence the Pre-Award Purchaser’s Requirement Certification was documented in the contract file. The aggregate amount of the non-compliant contracts was $47.6 million.

- Missing Post-Delivery Purchaser’s Requirements Certification: For 1 of 4 contracts reviewed, there was no evidence the Post-Delivery Purchaser’s Requirement Certification was documented in the contract file. The amount of the non-compliant contract was $26.8 million.

- Missing Intermediate Post-Delivery Purchaser’s Requirements Certification: For 1 of 3 contracts reviewed, there was no evidence the WMATA Program Office COTR performed the Intermediate Purchaser’s Requirements Certification for subsequent vehicles delivered through contract options and modifications. The amount of the non-compliance contract was $20.9 million.

- Incomplete Intermediate Post-Delivery Purchaser’s Requirements Certification: For 1 of 3 contracts reviewed, the Purchaser’s Requirements Certification was performed and provided after the OIG asked for the certification, but was incomplete. The amount of the non-compliance contract was $100 million.

**FMVSS Certifications:**

- Missing Pre-Award FMVSS Certification: For 1 of 4 contracts reviewed, there was no evidence the Pre-Award FMVSS Certification was documented in the contract file. The amount of the non-compliant contract was $26.8 million.

-
Audit of WMATA’s Buy America Contract Award and Oversight Process

- Incomplete Pre-Award FMVSS Certification: For 3 of 4 contracts reviewed, the Pre-Award FMVSS Certification was documented in the contract file, but the certification did not contain the number and description of vehicles. The aggregate amount of the non-compliant contracts was $107.6 million.

- Missing Post-Delivery FMVSS Certification: For 1 of 3 contracts reviewed, there was no evidence the Post-Delivery FMVSS Certification was documented in the contract file. The amount of the non-compliant contract was $26.8 million.

- Incomplete Post-Delivery FMVSS Certification: For 2 of 3 contracts reviewed, the Pre-Award FMVSS Certification was documented in the contract file, but the certification did not contain the number and description of vehicles. The aggregate amount of the non-compliant contracts were $94.3 million.

- Missing Intermediate Post-Delivery FMVSS Certification: For 1 of 3 contracts reviewed, there was no evidence the WMATA Program Office COTR performed the Purchaser’s Requirements Certification for subsequent vehicle deliveries. The aggregate amount of the non-compliant contracts was $20.9 million.

Why This Occurred

The following instances contributed to the conditions cited in the finding:

- Inadequate Buy America Policies and Procedures – The PPM and Buy America P/I (8.10/0) do not include clear and specific roles and responsibilities for monitoring and communicating Buy America certification requests, compliance and document retention procedures, specify Pre-Award and Post-Delivery Buy America requirements, or include Buy America waiver procedures.

- Insufficient Contract Monitoring – Rolling stock procurements were insufficiently monitored to ensure required certifications are completed and filed due to insufficient training, inadequate policies and procedures, and turnover in PRMT, including the Chief Procurement Officer and numerous procurement managers and administrators. In addition, systems that can potentially be used to ensure monitoring Buy America compliance, such the newly implemented Contract Lifecycle Management System (CLM) were not in place.

- RFP Templates do not require Buy America Certification – WMATA’s RFP template does not include a request for documentation and details supporting manufacturer’s certifications since the template does not reflect best practices outlined in FTA’s Buy America Handbook.
**Why This Is Important**

Bus, paratransit, and other rolling stock procurements totaling $68 million are not compliant with Buy America regulations, and procurements totaling $222 million do not align with FTA best practices for Buy America compliance (the 7000 series railcar procurement is currently in compliance).\(^\text{13}\) WMATA must adhere to the Buy America clause set forth in its grant contracts with FTA. RFP’s must include an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate. Failures to demonstrate compliance with certification requirements for awarded contracts can result in contract breaches, suspension, withholding, or repayment of Federal financial assistance from FTA or other appropriate actions.

**Recommendations:**

We recommend the General Manager/Chief Executive Officer:

1. Update the PPM and P/I to include the following:
   - Clarify and specify roles and responsibilities for monitoring and communicating certification requirements.
   - Detail compliance, monitoring, and document retention requirements.
   - Include specific Pre-Award and Post-Delivery Buy America certification requirements.
   - Include Buy America waiver procedures. (Action: Chief of Internal Business Operations) *(Risk – High)*

2. Leverage the Contract Lifecycle Management (CLM) system or other alternative system for monitoring Buy America Compliance. (Action: Chief of Internal Business Operations) *(Risk – Medium)*

3. Update RFP template to require supporting documentation for Manufacturer’s Certifications. (Action: Chief of Internal Business Operations) *(Risk – Medium)*

---

\(^\text{13}\)The aggregate amounts represent either missing or incomplete Buy America certifications from a sample of 31 contracts.
CONSOLIDATED LIST OF RECOMMENDATIONS

We recommend the General Manager/Chief Executive Officer:

1. Assign a Senior Level Official as Buy America Program Coordinator responsible for Buy America compliance, coordination, policies, and training. (Action: Chief of Internal Business Operations) (Risk – High).14

2. Include adherence to Buy America in relevant business/employee performance plans. (Action: Chief of Internal Business Operations) (Risk – Medium)

3. Ensure required Buy America Pre-Award, Post-Delivery, and Intermediate Post-Delivery Audits are conducted. (Action: Chief of Internal Business Operations) (Risk – High)

4. Develop comprehensive Buy America training and ensure appropriate personnel are cross-trained. (Action: Chief of Internal Business Operations) (Risk – Medium)

5. Update the PPM and P/I to include the following:
   - Clarify and specify roles and responsibilities for monitoring and communicating certification requirements.
   - Detail compliance, monitoring, and document retention requirements.
   - Include specific Pre-Award and Post-Delivery Buy America certification requirements.
   - Include Buy America waiver procedures. (Action: Chief of Internal Business Operations) (Risk – High)

6. Leverage the Contract Lifecycle Management (CLM) system or other alternative system for monitoring Buy America Compliance. (Action: Chief of Internal Business Operations) (Risk – Medium)

7. Update RFP template to require supporting documentation for Manufacturer’s Certifications. (Action: Chief of Internal Business Operations) (Note: Final action is complete and recommendation is closed.) (Risk – Medium)

---

14 Recommendations are rated as High, Medium, or Low risk and require management corrective actions to strengthen internal processes and provide for more effective and efficient operations.

High - Exception is material to accomplishing organization objectives. Corrective action by appropriate Senior Management is required. Resolution would help avoid loss of material assets, reputation, critical financial information or ability to comply with critical laws, policies or procedures.

Medium - Exception may be material to accomplishing organization objectives. Corrective action is required and the results are reported to management quarterly. Resolution would help avoid negative impact on the unit’s assets, financial information, or ability to comply with important laws, policies, or procedures.

Low - Exception has a minor impact on the accomplishment of organization objectives but may result in inefficient operations. Resolution would help improve controls and avoid inefficient operations within the unit.
SUMMARY OF MANAGEMENT’S RESPONSE

WMATA provided written comments to this report on April 28, 2017 (see Appendix B). IBOP and PRMT either concurred, substantially concurred, or partly concurred with our findings and agreed to implement all of our recommendations. The written comments included a summary of actions to be taken to correct the issues noted in the report. Management requested specific contract or purchase order numbers, which OIG has provided. Consequently, a more detailed corrective action plan for recommendations 1 through 6 is to be provided subsequent to the Final Report issuance at the end of May 2017. Based on Management’s response and action for recommendation 7, it has been closed.
OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Determine whether WMATA has adequate internal controls and oversight over its Buy America procurements for rolling stock.

Scope

The scope of the audit consists of two parts: the transactional scope (all federally funded rolling stock reimbursements), from July 1, 2015 to June 30, 2016, and the contract scope of purchased revenue rolling stock (buses, trains and paratransit vehicles) from FY2011 to FY2016 (July 1, 2010 to June 30, 2016). This “dual scope” approach was necessary to include coverage of Buy America pre-award and post-delivery audit requirements for longer term contracts, such as the 7000 series rail car acquisition. We examined 100 percent (5 contracts) of revenue vehicle procurements from FY2011 to FY2016. Also, we tested 100 percent (26 contracts) of other non-revenue vehicle rolling stock contracts identified in a population of Federal rolling stock reimbursements from July 1, 2015 to June 30, 2016.

Methodology

To accomplish our audit objective, we:

1. Reviewed CFR and FTA Buy America regulations and guidance,
2. Reviewed WMATA Buy America Policies and Procedures and P/Is,
3. Interviewed managers and staff members from PRMT, COUN, Vehicle Program Services (CENV), and Office of Bus Maintenance (BMNT) - Bus Engineering (BENG),
4. Examined contract and certification documentation,
5. Documented WMATA’s Buy America processes and internal controls,
6. Evaluated the design effectiveness of Buy America internal controls,
7. Selected samples of Federally funded rolling stock procurements,
8. Performed tests of operating effectiveness of internal controls, and
9. Performed analysis of internal control testing results.

We conducted this performance audit in accordance with generally accepted government audit standards. Those standard require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusion based on our audit objectives. We believe that the evidence obtain provides a reasonable basis for our findings and conclusions based on our audit objectives.
MEMORANDUM

SUBJECT: Response to OIG Draft Report, Audit of WMATA's Buy America Contract Award and Oversight Process, OIG 17-07

DATE: April 28, 2017

FROM: IBOP – John T. Kuo

THRU: GMGR/CEO – Paul J. Wiedefeld

TO: OIG – Geoffrey Cherrington

This is in response to the Office of Inspector General’s (OIG) draft report, Audit of WMATA’s Buy America Contract Award and Oversight Process, OIG 17-07, dated April 3, 2017. The objective of the audit was to determine whether WMATA had adequate internal controls and oversight over its Buy America procurements of rolling stock. The Surface Transportation Act of 1982 established the Buy American provisions. The current statute requires that federally funded rolling stock procurements contain at least 60 percent of domestic iron and steel content by cost and must be assembled in the United States. Rolling stock includes transit vehicles such as buses, railcars, locomotives, trolley cars, trolley buses, vans, ferryboats, vehicles used for support services, train control, communications, and traction power equipment.

OIG made three (3) findings: (1) lack of Buy America program oversight; (2) non-performance by Buy America pre-award and post-delivery audits were not performed for several contracts; and (3) evidence of required Buy America certifications were not maintained for several contracts. Along with these findings, OIG made seven (7) recommendations: (1) assign a senior level official as Buy America Program Coordinator responsible for Buy America compliance, coordination, policies and training; (2) include adherence to Buy America in relevant business/employee performance plans; (3) ensure required Buy America Pre-Award, Post-Delivery, and Intermediate Post-Delivery Audits are conducted; (4) develop comprehensive Buy America training and ensure appropriate personnel are cross-trained; (5) update the Procurement Procedures Manual (PPM) and Policy/Instruction (PI) to include the following: (i) Clarify and specify roles and responsibilities for monitoring and communicating audit requirements; (ii) Detail compliance, monitoring, and document retention requirements; (iii) Include specific Pre-Award and Post-Delivery Buy America requirements; and (iv) Include Buy America waiver procedures; (6) Leverage the Contract Lifecycle Management (CLM) system or other alternative system for monitoring Buy America compliance; and (7)
Response to OIG Draft Report, OIG 17-07
April 21, 2017
Page 2 of 6

Update the request for proposal (RFP) template to require supporting documentation for manufacturer’s certifications.

The Office of Procurement and Materials (PRMT) appreciates OIG’s conduct of the Buy America audit and agrees, in part, with several of the recommendations; however, several issues need clarification and may require a re-assessment of the findings. Page three of the report contains a legislative list which OIG used during the audit to address the issue of compliance. The Fixing America’s Surface Transportation (FAST) Act became effective on October 1, 2015. Also, the Small Purchase waiver exempts the Buy America requirement for purchases over $150,000 took effect December 26, 2015. Prior to that date, the small purchase threshold was $100,000. The majority of the procurements within the scope of the audit were awarded prior to or after the legislation listed. For example, PO 0000037966, in the amount of $92,186.76, is dated August 26, 2015. It is exempt from Buy America. Additionally, PO 0000106642 is for $139,286.94 and dated May 6, 2016. It is also exempt from Buy America because the small purchase threshold was increased on December 26, 2015. (See Attachment 1) Moreover, OIG did not list the identifying numbers for contracts, small purchases or purchase orders of the procurements which did not contain the requisite documents. Further, PRMT cannot verify the contract dollar amounts to determine if the percentage of non-compliance was correct. PRMT would like the opportunity to review these files. The documents may have been out of sequence. (See Attachment 2)

Recommendation 1: Assign a Senior Level Official as Buy America Program Coordinator responsible for Buy America compliance, coordination, policies and training.

Response:

PRMT substantially concurs with this recommendation. Currently, contract administrators (CAAs) must assemble all relevant written records for all procurements. These requirements are addressed in greater detail in P/1 8.7/2 and Chapters 8 through 13 of the PPM. To ensure all relevant procurement processes, including Buy America, are followed and all required documents are included in the procurement record file, the appropriate checklist (refer to Appendix A of the PPM for checklists) must be completed by the supervising Procurement Manager or Contract Manager to ensure that the proper procurement processes have been followed and all considerations relevant to the procurement process have been addressed. However, WMATA does not have a senior level official acting as the Buy America Program Coordinator. PRMT concurs with assigning the function of the Buy America Coordinator to a senior level official. To address this issue, PRMT has hired a Deputy Chief

* Note: The attachment has been removed.
Procurement Officer (CPO). His name is [ REDACTED ], and he is scheduled to start on May 1, 2017. The Deputy CPO is responsible for the development, implementation and oversight of departmental policies, regulations, procedures, goals, long-range strategies and schedules. Moreover, the Deputy CPO is responsible for special projects, related to strategic planning, contract management, organizational effectiveness, inventory management, and logistics support. Mr. [ REDACTED ] will be responsible for WMATA’s Buy America compliance, coordination, policies, and training. A more detailed description of the duties of the Buy America Coordinator will be submitted to OIG with PRMT’s final Corrective Action Plan (CAP) by May 30, 2017.

Recommendation 2:
Include adherence to Buy America in relevant business/employee performance plans.

Response:

PRMT concurs with this recommendation. A detailed description of the objectives and duties of the Buy America Coordinator will be submitted to OIG with PRMT’s final Corrective Action Plan (CAP) by May 30, 2017 (See response to Recommendation 1)

Recommendation 3:
Ensure required Buy America Pre-Award, Post-Delivery, and Intermediate Post-Delivery Audits are conducted.

Response:

PRMT substantially concurs with this recommendation. PRMT has already developed and implemented clear procurement policy instructions on Buy America audits. However, based on OIG’s audit findings, they were not followed in the following instances: (1) no pre-award audits for 3 of 5 contracts reviewed; (2) no post-delivery audits for 1 of 4 contracts reviewed; and (3) no intermediate post-delivery audits for all contracts reviewed. Again, OIG did not list the contract numbers which would allow PRMT to verify whether the audits were conducted. Moreover, OIG cited, for the intermediate post-delivery audit requirements, FTA’s 2015 and 2017 Buy America handbooks. It is noted that best practices are non-binding guidance documents and were not in effect at the time of award of the contracts which were reviewed. Section 6-6 (a) of the PPM requires compliance with the Buy America requirements. (See Attachment 3)* The PPM addresses the conduct of Buy America audits in detail. Section 6-10, entitles Audits of Rolling Stock Purchases, requires CAs

* Note: The attachment has been removed.
Response to OIG Draft Report, OIG 17-07  
April 21, 2017  
Page 4 of 8

to ensure compliance with FTA regulations 49 CFR Part 663. These regulations apply to the purchase of rolling stock for carrying passengers in revenue services. CAS must also ensure compliance with the provisions of Circular 4220.1, Chap. IV, Sec. 2.e that may affect rolling stock procurements. Pre-Award and Post-delivery audits are required to ensure compliance with Buy America. The Pre-Award and Post-Delivery audits may be performed by a third party auditor or the Office of Inspector General (OIG) Audit Team. If requesting the OIG to perform the Pre-Award or Post-Delivery audit, a checklist must be used. (See Attachment 4) Moreover, CAS must prepare a contract file checklist to ensure that the Buy America audits are included in the file. This is done for the purchase of rail vehicles and buses. (See Attachment 5 and Attachment 6) The Buy America coordinator will ensure that these audits are performed and the documents are placed in the contract files.

Recommendation 4:  
Develop comprehensive Buy America training and ensure appropriate personnel are cross-trained.

Response:

PRMT concurs with this recommendation. PRMT hired a consultant to review and revise the PPM. This will include the sections on Buy America. The PPM update is scheduled for completion by September 30, 2017. At a meeting with OIG concerning its findings on Buy America, PRMT stated that it will prepare a Buy America Desk Book based on FTA’s Buy America Handbook. The purpose of the FTA handbook is to assist recipients, auditors, rolling stock manufacturers, and subcontractors and suppliers in understanding and correctly applying FTA’s pre-award and post-delivery audit requirements for rolling stock vehicle purchases. The new WMATA Buy America desk book will serve as a training manual for all PRMT and program staff involved in the purchase of rolling stock. The PRMT Buy America desk book will be placed on PRMT’s website and a hard copy will be given to all PRMT staff. This desk book should be completed by September 30, 2017. A copy of this desk book will be forwarded to OIG upon completion.

On October 17, 2016, the Chief Procurement Officer (CPRO) developed and implemented a monthly Knowledge Sharing Training Program. This is mandatory training for all PRMT staff to ensure compliance with FTA regulations and the Common Grants Rule and a working knowledge of Best Practices. The staff from the program offices were encouraged to attend. Presentations are given by subject matter experts, followed by a question and answer period. (See Attachments 7, 8, and 9) In response to this recommendation, PRMT conducted a Buy America training session at the April

* Note: The attachment has been removed.
Response to OIG Draft Report, OIG 17-07
April 21, 2017
Page 5 of 6

19, 2017, monthly Knowledge Sharing program. The training was conducted by a senior contract administrator who is a subject matter expert and addressed the following: (1) defined Buy America; (2) explained the scope of the legislation; (3) explained the new parameters of the FAST Act; (4) explained Buy America with respect to the procurement of rolling stock (e.g. Pre-Award audits, Post-Delivery audits, and domestic content calculations); (5) the procurement of spare parts (e.g. rolling stock parts and inventory parts); (6) Buy America certification clauses in Invitation for Bid (IFB) and Request for Proposals (RFPs); and (7) Buy America waivers. (See Attachment 10)

After the Buy America Desk Book is completed and approved, a follow-up training session will be conducted at the monthly knowledge sharing meeting for both PRMT, BUS, and RAIL program staff. The Buy America training for both PRMT and program staff will be conducted by October 31, 2017.

Recommendation 5:
Update the PPM and PIF to include the following: (i) Clarify and specify roles and responsibilities for monitoring and communicating audit requirements; (ii) detail compliance, monitoring, and document retention requirements; (iii) include specific Pre-Award and Post-Delivery Buy America requirements; and (iv) include Buy America waiver procedures.

Response:
PRMT concurs in part with this recommendation. PRMT has hired consultants to review and revise the PPM, all procurement standard operating procedures (SOPs), and the current PRMT training manuals. This will include the sections of the PPM on Buy America. The PPM update is scheduled for completion by September 30, 2017. However, the purpose of a WMATA Policy/Instruction is to establish a policy, establish the criteria for implementing the policy, and the responsibilities of certain WMATA program offices and officials in carrying out the policy. It is not the function or the intent of a policy/Instruction to set forth a step by step process for implementing the policy. An SOP or a desk book is the correct tool to use to describe the step by step process. The Buy America coordinator will draft a Buy America desk book. The new WMATA Buy America desk book will serve as a training manual for all PRMT and program staff involved in the purchase of rolling stock. (See Response to Recommendation 4). The PRMT Buy America desk book will be placed on PRMT’s website and a hard copy will be given to all PRMT staff. The desk book should be completed by September 30, 2017, and will address the following: (1) clarify and specify roles and responsibilities for monitoring and communicating audit requirements; (ii) set forth in detail FTA compliance, monitoring, and document retention requirements; (iii) explain specific pre-award and post-delivery Buy

* Note: The attachment has been removed.
Response to OIG Draft Report, OIG 17-07
April 21, 2017
Page 6 of 6

America requirements; and (iv) explain Buy America waiver procedures. A copy of the dock book will be forwarded to OIG upon its completion.

Recommendation 6:
Leverage the CLM system or other alternative system for monitoring Buy America Compliance.

Response:
PRMT concurs with this recommendation. The CLM is the software for drafting solicitations. PRMT has prepared a template for solicitations in CLM. All of the requisite Buy America requirements are included in this template. (See Attachment 11). Further, PRMT agrees to review CLM to determine if it can facilitate the contract lifecycle by implementing a contract Buy America compliance monitoring module for PRMT’s use.

Recommendation 7:
Update RFP template to require supporting documentation for Manufacturer’s Certifications.

Response:
PRMT concurs with and has implemented this recommendation. PRMT has prepared templates for solicitations in CLM. All of the requisite Buy America requirements are included in this template. Section 9 of the template entitled “Pre-Award and Post-Delivery Audit Requirements addresses documentation. (See Attachment 11).”

PRMT respectfully requests this recommendation be closed.

*Note: The attachment has been removed.
TO REPORT FRAUD, WASTE, OR ABUSE

Please Contact:

Email:  
wmata-oig-hotline@verizon.net

Telephone:  
1-888-234-2374

Address:  
WMATA
Office of Inspector General
Hotline Program
600 5th Street, NW, Suite 3A
Washington, DC 20001