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**Urban Mass Transportation Administration's  
Enforcement of Buy America Provisions of  
the Surface Transportation Assistance Act**

Statement of  
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Before the  
Subcommittee on Investigations and Oversight  
Committee on Public Works and Transportation  
House of Representatives



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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to appear before the Subcommittee to discuss the findings of two prior GAO reviews<sup>1</sup> about the Urban Mass Transportation Administration's (UMTA) monitoring and enforcement of the Buy America provision of the Surface Transportation Assistance Act of 1982. Our February 1985 report discussed UMTA's efforts to ensure that grantees were complying with selected federal requirements. Our September 1987 fact sheet specifically examined the enforcement of the Buy America requirement in Sacramento.

Our testimony today will make three points based on our past reviews. First, the Buy America requirement is complex and subject to misinterpretation. Second, UMTA's approaches to grantee oversight are not structured to monitor for compliance with the Buy America requirement. Third, UMTA does not have precise guidance for choosing appropriate enforcement options in cases of noncompliance with federal requirements.

#### BACKGROUND

UMTA provides federal grant funds for mass transportation projects. In fiscal year 1987, UMTA provided nearly \$2.5 billion in capital grants for 526 new projects. As a condition of receiving grants, grantees may certify compliance with various federal requirements. Grantees must include, in a bid

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<sup>1</sup>UMTA Needs Better Assurance That Grantees Comply With Selected Federal Requirements (GAO/RCED-85-26, Feb. 19, 1985), and Buy America Requirements: Federal Enforcement Questioned In Sacramento Mass Transit Procurement (GAO/RCED-87-162FS, Sept. 1, 1987).

specification for procurement, a requirement that bidders certify compliance with the Buy America requirement.

The Buy America requirement generally provides that only domestic steel and manufactured products are to be used in federally funded capital projects. The requirement is waived if the Secretary of Transportation finds that: (1) it is inconsistent with the public interest; (2) quality materials and products are not available in the United States; (3) the project involves rolling stock, in which case a certain percentage<sup>2</sup> of the rolling stock cost must be domestic and final assembly must be in the United States; or (4) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

BUY AMERICA REQUIREMENT  
IS SUBJECT TO MISINTERPRETATION

We found that the Buy America requirement is complex and subject to misinterpretation by UMTA, grantees, and third-party contractors. In our 1987 review, we found that the Buy America violation was the result of misinterpretation of the requirement. The contractor and UMTA arrived at different interpretations of the requirement. The dispute focused on definitional differences between "manufacture" and "assembly" and also "component" and "subcomponent."

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<sup>2</sup> Currently more than 50 percent of all subcomponents and components must be produced in the United States; this increases to 55 percent on October 1, 1989, and to 60 percent on October 1, 1991.

The contractor used foreign light-rail-vehicle chassis parts to produce the chassis in a Sacramento facility, believing this constituted domestic "manufacture" of a major "component" of the vehicle. UMTA disagreed, claiming the chassis was "assembled" not "manufactured" in Sacramento. UMTA further claimed that since the foreign parts were the only manufactured parts of the chassis, they qualified as "components" rather than "subcomponents". The significance of this is that while each component must be treated as entirely foreign or entirely domestic, the origin of subcomponents is immaterial. Because of this, UMTA considered the chassis to be foreign made, causing the total vehicle to exceed the domestic content requirement.

The Congress amended the act in 1987 to clarify the compliance requirements by requiring subcomponents to be counted toward meeting the Buy America domestic content standard. UMTA has not yet published regulations implementing this change.

Because it is difficult to draft a regulation that will provide an all-purpose definition of these and other complex concepts, further clarification of Buy America usually involves compliance monitoring and case-by-case decisions by UMTA's Office of Chief Counsel. In 1985, in order to increase the understanding of and compliance with UMTA's regulations, we recommended that UMTA disseminate its legal rulings on regulations to all grantees and UMTA regional offices. According to UMTA, legal rulings are currently disseminated to all regional offices, but regional offices are not required to disseminate the rulings to grantees.

We continue to believe that dissemination of UMTA's decisions to grantees would, over time, provide a broader, more consistent understanding of the Buy America requirement.

#### WEAKNESSES IN-CURRENT

##### COMPLIANCE MONITORING APPROACHES

Effective monitoring can help avert compliance problems with the Buy America requirement if it is conducted before contracts are awarded. Our 1985 review found that grantees certified compliance with federal requirements and UMTA's compliance monitoring consisted of DOT Inspector General audits, independent audits of grantees required by Office of Management and Budget Circular A-102, and third-party complaints. However, we noted that these mechanisms are not structured to focus on compliance with UMTA regulations and concluded that UMTA needed better assurance that grantees comply with selected federal requirements. Since then, three other potential Buy America compliance monitoring approaches have been made available to UMTA: triennial reviews, project management oversight, and preaward and postdelivery audits.

UMTA is required to perform, at least once every 3 years, a full review of a grant recipient's compliance with all statutory and administrative requirements. In our 1985 report, we recommended that UMTA's triennial reviews emphasize compliance with those requirements, such as Buy America, that are not routinely covered by Inspector General and independent audits. However, since the triennial review examines each grantee only once every 3 years, it may not provide routine oversight of Buy America for

every grantee procurement. Moreover, UMTA's current triennial review guidance on Buy America is limited to: (1) ensuring that a Buy America provision is in the grantee's procurement solicitations; (2) ensuring the grantee has obtained Buy America certifications; and (3) checking whether any waivers had been granted or requested. The triennial review does not provide routine or comprehensive oversight of individual procurements before a contract is signed.

The purpose of project management oversight is to ensure that major capital projects are completed on time, within budget, constructed in accordance with approved plans, and efficiently and effectively implemented. In 1987, Congress authorized UMTA grant funds to be set aside to contract for project management oversight. This oversight, however, is not likely to provide a timely or consistent review of the Buy America requirement for all procurements. In 1987, we reported that a Buy America violation in Sacramento was first identified by the project management oversight contractor, but only after the first 15 vehicles had already been completed. Furthermore, UMTA's proposed regulation on project management oversight reviews does not specifically mention compliance with Buy America and would be limited to major capital projects. Since project management oversight is intended primarily for large construction activities, a major capital project would not involve the exclusive acquisition of rolling stock, vehicle maintenance or rehabilitation, or projects of less than \$100

million unless the UMTA administrator designates the project to be "major."

The preaward aspect of the preaward and postdelivery audit requirement, established in 1987, offers the best opportunity for timely and comprehensive compliance monitoring of the Buy America requirement, although it only applies to the procurement of rolling stock. The requirement for a preaward audit was intended to ensure that compliance with the Buy America requirement is firmly established before a grantee signs a contract, and before a grantee formally accepts a contractor's products. In Sacramento, a preaward audit may have avoided the misinterpretation of and subsequent noncompliance with Buy America before the contract was awarded.

UMTA has not yet published regulations implementing the preaward and postdelivery audit requirement. We understand that UMTA is preparing a draft regulation that will place the responsibility for these audits with its grantees, who might conduct such audits directly or contract for them. In either case, UMTA would not make the initial compliance interpretations. We are concerned that this approach may result in a variety of grantee interpretations of the complex Buy America requirement at the preaward stage, that could later be subject to different interpretations by UMTA. In short, UMTA's current plan will not ensure an authoritative compliance review before a contract is signed.

Since UMTA alone has the authority to make final interpretations of the Buy America requirement, its involvement in a preaward audit could assist the interpretation and compliance monitoring of Buy America before a contract is awarded. UMTA should consider several options for ensuring timely and comprehensive compliance:

- Training UMTA regional staff to assist in audits of Buy America requirements.
- Reviewing audit interpretations that are identified by grantees and UMTA's regional offices as questionable.
- Training and utilizing project management oversight contractors to provide review of the Buy America requirement during all phases of major capital projects.

#### ENFORCEMENT GUIDANCE TOO GENERAL

When UMTA determines that a grantee is not complying with federal requirements, it can choose among several options. For example, UMTA can withhold grant moneys until corrective action is taken, sue the grantee to recover improperly used moneys, or work with the grantee to achieve compliance. Although we did not identify specific problems with UMTA's enforcement actions, we recommended, in 1985, that UMTA establish guidance for choosing appropriate enforcement action when noncompliance was identified. We listed the types of factors UMTA's regional offices might consider in deciding on the appropriate enforcement option: the impact of noncompliance on third parties, the involvement of fraud, good faith efforts by the grantee to correct its problems, and the



need for UMTA to repeatedly correct the same noncompliance by a grantee.

In response to our recommendation, UMTA stated that its triennial review notice contains guidelines for enforcement options available when noncompliance is identified. However, UMTA's triennial review guidance on the use of enforcement options is very general. The guidance merely lists enforcement options and states that UMTA may "take other action as appropriate depending on the severity of noncompliance and the grantee's ability and willingness to implement corrective actions." The guidance also states, "Corrective actions will be discussed with the grantee and monitored by the Regional Office to ensure that compliance is achieved in a timely manner."

We are concerned that UMTA's general guidance may not be very helpful to its regional staff in choosing appropriate enforcement options. We understand that the complex circumstances surrounding any instance of noncompliance preclude the use of regulations which attempt to define specific penalties for specific violations. Regional offices must have some degree of discretion in choosing an enforcement option. Nevertheless, in order to promote consistent use of enforcement options among regional offices and to accelerate the resolution of noncompliance cases, UMTA should attempt to establish more precise guidelines for the use of enforcement options.

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In summary, the Buy America requirement is complex, subject to misinterpretation, and not easily clarified by an all-purpose definition in regulations. The dissemination of UMTA's decisions to grantees, in addition to the issuance of new regulations that implement the 1987 changes, would provide a better understanding of the Buy America requirement. UMTA's involvement in a preaward audit would further assist the interpretation and compliance monitoring of the Buy America requirement. Finally, more precise UMTA guidelines for the use of enforcement options when noncompliance is identified would promote consistency among regions and accelerate the resolution of noncompliance cases.

Accordingly, we recommend that the Secretary of Transportation direct the UMTA administrator to: (1) routinely disseminate UMTA's legal rulings on Buy America to all grantees, (2) provide for UMTA's direct involvement in the preaward audit of rolling stock procurements, and (3) establish more precise guidelines for the use of enforcement options when noncompliance with Buy America is identified.

This concludes my testimony, Mr. Chairman. I will be happy to answer any questions you might have at this time.