

GAO

Fact Sheet for the Chairman,  
Subcommittee on Investigations and  
Oversight, Committee on Public Works  
and Transportation, House of  
Representatives

September 1987

# BUY AMERICA REQUIREMENTS

## Federal Enforcement Questioned in Sacramento Mass Transit Procurement



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Resources, Community, and  
Economic Development Division

B-226739

September 1, 1987

The Honorable James L. Oberstar  
Chairman, Subcommittee on  
Investigations and Oversight  
Committee on Public Works and  
Transportation  
House of Representatives

Dear Mr. Chairman:

In your January 16, 1987, letter, you requested that we ascertain the facts and circumstances of the settlement in November 1986, by the Department of Transportation's Urban Mass Transportation Administration (UMTA), the Sacramento Regional Transit District (SRT), and Siemens Energy and Automation, Inc., of an alleged violation of the Buy America requirements, Section 165 of the Surface Transportation Assistance Act of 1982, and the implementing UMTA regulation (49 C.F.R. Part 661). This fact sheet summarizes the information conveyed to your staff in a briefing on April 8, 1987. In addition, we have included information we found regarding a separate and as yet unresolved allegation by UMTA that SRT violated the Buy America requirements in the first 6 weeks of operation of its light rail system, in March and April of 1987.

Section 165 of the act restricts federally funded mass transportation rolling stock procurement to equipment of domestic origin, defined as equipment whose domestic components represent more than 50 percent of the cost of all components. An exception is provided, however, where producing a domestic product would increase the overall project contract cost by more than 10-percent.

UMTA is providing federal financial assistance under a grant to SRT for a light rail transit system that SRT will own and operate. The Sacramento Transit Development Authority (STDA) was established separately to manage the procurement of equipment for the transit system, utilizing SRT's grant funds. STDA contracted in February 1984 with Siemens--an Atlanta, Georgia-based company that is owned by a West German firm--to build 26 light rail vehicles (LRVs) at a cost of \$24,352,073.

In discussion with your staff, we identified three principle areas of concern in this procurement between December 1983 and November 1986.

- The Compliance Certificate: On what basis did Siemens certify that its proposal to build the LRVs in West Germany would comply with Buy America requirements?
- The Compliance Interpretation: Within the meaning of the Buy America act, did Siemens manufacture or merely assemble the LRV chassis in Sacramento?
- The Settlement Agreement: What basis did UMTA have for settling the alleged violation in this manner?

In the matter of the compliance certificate, we found that both STDA and Siemens were confused about--and UMTA's regulation failed to specify--the procedures to be followed in order for UMTA to apply the 10-percent cost increase exception in the act. Advised by STDA that proposals must certify compliance with Buy America requirements, Siemens submitted a proposal to build the LRVs in West Germany and certified compliance with the act. Siemens officials told us they interpreted the act as providing two approaches to compliance: (1) provide a domestic product or (2) provide a foreign product at a cost 10-percent lower than the lowest bid for a domestic product. Under this interpretation, Siemens reasoned that its proposal--to produce a foreign product at a cost that it estimated would provide the 10-percent advantage--was an offer in compliance with the act. Although Siemens' cost proposal was 23.2-percent lower than the nearest bidder, UMTA refused, on procedural grounds, to apply the cost exception. Because Siemens had certified compliance with the act, UMTA notified Siemens that it was bound by the contract to deliver a domestic product. In consideration of delays and confusion over the certification requirements and process, UMTA concurred in STDA's decision to extend the delivery schedule and provide Siemens advance payments. UMTA subsequently amended its regulation to further specify the certification requirements.

In interpreting compliance under the act, UMTA and Siemens disagreed on the definitions of "manufacture" and "component." Attempting to produce a domestic product, Siemens followed an approach previously approved by UMTA in a case in Pittsburgh. Siemens manufactured LRV chassis parts in West Germany and produced the chassis from these

parts in a Sacramento facility, believing this constituted domestic "manufacture" of a major component of the LRV. After Siemens had completed 15 LRVs in this manner, UMTA found the completed LRVs in violation of the act, stating that Siemens was merely assembling--not manufacturing--the chassis in Sacramento. The Congress has since amended the act to strengthen and clarify the compliance requirements.

In settling the dispute, UMTA, SRT, and Siemens agreed in November 1986 that (1) all 26 LRVs were covered by Buy America requirements, (2) the 15 completed LRVs were not in compliance, (3) UMTA would not enforce the Buy America requirements with respect to the 15 noncompliant LRVs, and (4) Siemens would follow a specified plan to ensure that the remaining 11 LRVs would comply. UMTA officials told us they settled the case in this way because, in the event of litigation (1) a judge might find that the first 15 LRVs were not bound by Buy America requirements, (2) Siemens might have a legitimate issue in the definition of "component," particularly in view of UMTA's ruling in a similar case in Pittsburgh, (3) a judge would not likely require components that were not in compliance to be disassembled and reassembled in the United States in order to convert them into a domestic product, and (4) the delay of litigation would have an enormously detrimental effect on Sacramento's bond rating. In addition, UMTA reported that it had no evidence that Siemens had willfully violated the Buy America requirements.

SRT initiated service on its new light rail transit system on March 16, 1987, with 17 LRVs. In order to begin service on schedule, SRT supplemented the completed 15 LRVs with 2 LRVs whose chassis had not yet been remanufactured under the compliance plan (SRT conditionally accepted delivery of these 2 LRVs from Siemens for testing; that is, Siemens was still legally bound to correct any deficiencies, including noncompliance with Buy America requirements). SRT used these 2 LRVs until April 22, 1987, when Siemens replaced the chassis with chassis remanufactured according to the compliance plan. On May 11, 1987, UMTA alleged that SRT's temporary use of the two noncompliant chassis violated both the Buy America requirements and the terms of the November 1986 settlement agreement and notified SRT of its intention to reduce overall federal support of the project by about \$1.33 million. In a July 3 response to UMTA's notification letter, SRT disagreed that its use of the two LRVs violated either the Buy America requirements or the terms of the

settlement agreement and argued that UMTA's proposed penalty was overly harsh and not consistent with normal procedures for resolving grant compliance issues. As of July 21, 1987, this new case was unresolved.

A detailed account of the original violation case and the more recent violation finding may be found in section 1. In determining the facts of both cases, we interviewed and obtained documents from officials of UMTA, SRT, Siemens, and certain U.S. railcar suppliers. From the information they provided us, we prepared a factual chronology (see section 2) and provided it to UMTA, SRT, and Siemens for review. Their comments have been incorporated in the chronology where appropriate. We also discussed our summary of the facts with UMTA officials, who agreed with its content.

Unless you publicly announce its contents earlier, we plan no further distribution of this fact sheet until 30 days from the date of this letter. At that time, we will send copies to interested parties and make copies available to others upon request. If you have any questions on this fact sheet, please contact me at (202) 366-1743.

Other major contributors to this fact sheet are listed in appendix II.

Sincerely yours,



Kenneth M. Mead  
Associate Director

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ABBREVIATIONS

DOT	Department of Transportation
LRV	light rail vehicle
SRT	Sacramento Regional Transit
STDA	Sacramento Transit+ Development Authority
UMTA	Urban Mass Transportation Administration

## SECTION 1

### SUMMARY OF THE FACTS CONCERNING THE SACRAMENTO

#### LIGHT RAIL VEHICLE PROCUREMENT

Section 165 of the Surface Transportation Assistance Act of 1982 requires that federal funds may not be obligated for mass transportation projects unless steel, cement, and manufactured products used in such projects are produced in the United States. However, this requirement does not apply in the case of the procurement of buses and other rolling stock if the cost of components that are produced in the United States is more than 50 percent of the cost of all components of the vehicles or equipment, and final assembly is in the United States or the inclusion of domestic material will increase the contract cost by more than 10 percent.

The Urban Mass Transit Administration (UMTA) is providing federal financial assistance under a grant to the Sacramento Regional Transit District (SRT), Sacramento, California, for a light rail transit system that SRT will own and operate. The Sacramento Transit Development Agency (STDA), the system's construction manager, contracted in February 1984 with Siemens Energy and Automation, Inc.--an Atlanta, Georgia-based company that is owned by a West German firm--to build 26 light rail vehicles (LRVs) at a cost of \$24,352,073.

In summary, the violation of the Buy America requirements which arose in this case involved three central issues: (1) confusion over the Buy America compliance certificate, (2) disputed compliance of the first 15 LRVs completed by Siemens, and (3) appropriateness of the agreement between UMTA, SRT, and Siemens to settle the case. The violation arose initially out of SRT's and Siemens' confusion over the certification and bid requirements. After the contract was signed, UMTA rejected an SRT request for a determination that the 10-percent cost exception from Buy America requirements was applicable to the contract<sup>1</sup> on grounds that the required certification and waiver request procedures had not been used. UMTA ruled that Siemens was bound by the contract to deliver a domestic product, and Siemens built LRVs using a domestic manufacturing approach which UMTA had previously approved in a similar case in Pittsburgh.

When UMTA found the first 15 LRVs--which had been designated as locally funded--in violation of the requirements, Siemens disputed UMTA's interpretation of the manufacturing process, and

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<sup>1</sup>In this report, we have used the term "waiver" to refer to determinations that the exception applies.

SRT disputed UMTA's interpretation that these locally funded LRVs were covered by the requirements.

UMTA negotiated a settlement agreement with SRT and Siemens whereby Siemens agreed to a more costly, domestic manufacturing approach to its production of the remaining 11 LRVs and UMTA agreed not to pursue enforcement regarding the first 15 LRVs. UMTA states they settled the case in this way because the 15 LRVs were already completed, they felt Siemens had acted in good faith, and there was at least a reasonable question whether these locally funded LRVs were covered by the requirements. As of April 1987, UMTA's inspectors found no problems with Siemens' implementation of the compliance plan.

However, UMTA learned in April 1987, that SRT had initiated revenue service using two chassis that had not been remanufactured as required in the compliance plan and in May, notified SRT of its intention to penalize this violation by reducing federal funding for the project by about \$1.4 million. SRT disagreed that there had been a violation and in July, asked UMTA to re-evaluate both its finding and proposed penalty. As of July 21, 1987, this new case remained unresolved, although UMTA had temporarily suspended action on the grant reduction.

Both UMTA and the Congress have meanwhile attempted to address the problems of confusion over Buy America certificates and compliance typified by this case. In June 1986, UMTA had published a revision of its regulation intended to, among other things, reduce confusion over the certification requirements. Subsequently, in April 1987, the act was amended to strengthen and further clarify the compliance requirements. In addition, a requirement was imposed for preaward and post-delivery audits of grants for the purchase of buses and rolling stock.

#### THE CERTIFICATE ISSUE

##### Siemens Believed It Could Comply With the Buy America Requirements Either by Producing a Domestic Product or by Securing a Waiver

In response to STDA's request for technical proposals on 26 LRVs, Siemens submitted a proposal to provide domestically produced LRVs and an alternative proposal offering an identical product to be manufactured in West Germany (see app. I). Siemens' letter transmitting the alternative proposal and requesting that it be qualified, stated that the requirements of Buy America were understood and would be met, but then cited the 10-percent cost exception to the Buy America requirements in section 165 of the act. Siemens officials told us their logic for submitting the two proposals was based on their interpretation of section 165--the Buy America section--of the act. They believed that section 165 provided alternative approaches to compliance, such as an offer to produce,

- a domestic product, or,
- a foreign product at a price that turned out to be at least 10 percent less than the lowest-cost domestic product offered.

Siemens believed that since the 10-percent added cost exception was a part of section 165, its offer to produce a foreign product at a cost presumably within the 10-percent threshold was an offer in compliance with the act. Siemens told us this was its reason for certifying that the Buy America requirements would be met in its alternative proposal to build a foreign product.

In a January 12, 1984, letter to Siemens (see app. I), STDA stated it could not now qualify Siemens' proposal as requested, because the proposal explicitly contemplates manufacture and assembly outside the United States and, therefore, does not comply with Buy America unless and until the bid price is 10-percent less than the next higher proposal. STDA went on to note that UMTA, rather than STDA, had the sole authority to interpret the Buy America requirements. However, STDA stated that if the 10-percent price difference was demonstrated at the time of bid opening, it knew of no reason why the exception would not apply.

When the bids were opened, Siemens' cost proposal was 23.2 percent lower than the nearest bidder, and STDA signed a contract with Siemens on February 2, 1984. On the following day, Siemens asked STDA to arrange for a waiver of the Buy America requirements, citing STDA's letter of January 12. SRT submitted the request to UMTA on February 15, 1984. On February 28, Siemens asked STDA for a stopwork order (an order to the contractor to suspend work on the contract, which would automatically extend delivery deadlines) or an extension of the delivery schedule while the waiver request was pending. STDA denied this request, and Siemens began work on the contract.

#### Denial of the Waiver: UMTA Went on Record in May 1984, Requiring Siemens To Produce a Domestic Product

On May 25, 1984, UMTA denied SRT's request for a waiver, ruling that a vendor whose bid certifies compliance with Buy America requirements is obligated to produce a domestic product. UMTA held that Siemens was not eligible to improve its position after the bids were opened and the contract awarded by seeking a waiver of that obligation. UMTA stated that in order to be eligible for a waiver consideration,

- Siemens should have certified that its proposed product would not comply with Buy America requirements, and,

-- if Siemens' cost proposal then met the 10-percent threshold, Siemens would have had to seek a waiver before signing a contract.

UMTA's regulation did not provide this guidance at the time of Siemens' bid. Moreover, when Siemens offered a proposal specifying a foreign-made product--that is, a product that did not comply with the Buy America requirements--STDA declined to qualify it. However, STDA's letter did point out to Siemens that only UMTA had the authority to interpret the requirements of the act.

As a result of UMTA's denial of the waiver request, Siemens found itself bound by a contract which required it to build a domestic product. Consequently, Siemens filed a claim with STDA in June 1984 to recover the costs and time Siemens expected to lose because of this unexpected change from foreign to domestic manufacturing arrangements. SRT, while considering its guidance to STDA in responding to Siemens claim, asked for UMTA's support in its position that there had been no "unexpected change," that the original contract bound Siemens to build the 26 LRVs domestically. UMTA declined, stating that it could not properly take a position on any matter of interpretation of the STDA/Siemens contract. In January 1985, UMTA did concur with an SRT proposal for settling the Siemens claims, and STDA proceeded to execute an agreement with Siemens. In consideration of confusion over the Buy America compliance certificate and requirements and delay in handling the waiver request, the agreement amended the February 1984 contract to extend the delivery schedule and to provide for advance payments to Siemens.

#### Fifteen LRVs Were Removed From the UMTA/SRT Grant Agreement

In February 1985, SRT proposed an amendment to its full funding grant agreement with UMTA that would restrict federal funding to 11 of the 26 LRVs--the remaining 15 LRVs to be purchased entirely with local funds. According to SRT, its purpose was to remove any federal interest from the 15 LRVs--the first scheduled for delivery from Siemens, who were now several months into contract performance--so that the LRVs could be used to secure financing for anticipated cost overruns on the project. UMTA concurred in SRT's proposal, and the grant agreement was amended accordingly in July 1985. This change became relevant later, when the issue of compliance with the federal Buy America requirements was raised by UMTA with respect to the same 15 LRVs.

#### THE COMPLIANCE ISSUE

The 1982 act required that the cost of domestic components exceed 50 percent of the cost of all components of a rolling stock (e.g., an LRV). Therefore, in determining whether a vehicle is in compliance with the act, it was necessary to determine

- which parts of a vehicle are "components" and
- whether each component was manufactured in the United States or in a foreign country.

UMTA's regulation implementing section 165 of the act provided some guidance:

- "Component"--any article or material or supply, manufactured or unmanufactured, directly incorporated into the end-product at the final assembly location.
- "Manufacturing process"--a process whereby an original material is changed or transformed into an article which, because of the process, is different from the original product.
- "... in determining the origin of components, each component must be treated entirely domestic or entirely foreign, based on the place where the component is mined, produced, or manufactured."

#### UMTA Determines That Siemens Is Violating the Buy America Requirements

In March 1986, UMTA found that Siemens' LRVs were being constructed in violation of Buy America requirements. In its finding, UMTA disagreed with Siemens' view of which parts of the LRV were components and with Siemens' definition of a manufacturing process.

After UMTA's May 1984 denial of the waiver request required Siemens to produce a domestic product, Siemens had proceeded to develop an approach based upon its own interpretation of the statute and regulation. Its approach was to manufacture chassis parts in West Germany and, in a process Siemens termed "manufacture," produce the chassis from these parts in a Sacramento facility. Siemens then moved the completed chassis to a separate but nearby facility in Sacramento, where it was incorporated with a West German-made body to form the complete LRV, a process Siemens termed "final assembly." In Siemens' view, the chassis was manufactured from the foreign-made subcomponents in Sacramento and then incorporated directly into the LRV and was thus qualified as a "domestic component." The total cost of the chassis--including the cost of the foreign-made subcomponents--could then be included as the cost of a domestic component of the LRV, Siemens contended.

In May 1985, seeking to reassure itself that this approach would result in a "domestic product," Siemens telephoned UMTA and sought a compliance interpretation by posing a specific hypothetical case. In the telephone discussion which followed,

Siemens understood UMTA's Deputy Chief Counsel to say that even though all of the subcomponents of a component may have been manufactured outside the United States, the Buy America requirements could be fulfilled as long as the U.S. facility where the component is manufactured from the subcomponents, and the U.S. facility where the completed component is incorporated into the LRV (final assembly), are separate and distinct (UMTA officials have confirmed this characterization of the discussion).

In March 1986, when Siemens had substantially completed the first 15 (locally funded) LRVs and, after meeting with its Project Management Oversight Contractor (Hill International), reviewing the detailed records of the production process and conducting an inspection of both Siemens facilities in Sacramento, UMTA found the 15 LRVs in noncompliance with the Buy America requirements. UMTA held that the work done on the chassis in the one Siemens facility in Sacramento was not "manufacturing" as Siemens contended but, in fact, was merely the assembly of the parts made in West Germany into a chassis. UMTA interpreted this process as the first step of "final assembly" later completed in the adjacent facility, which meant the chassis had no domestic manufacturing input. Instead, according to UMTA, the foreign-made parts were the only "manufactured" parts of the chassis and had been "incorporated directly" into the LRV at "final assembly," thus qualifying as "components," rather than "sub-components." Since the cost of these foreign-made "components," taken together with another foreign-made component of the LRV (the body shell), amounted to 85 percent of the cost of all the LRV components, UMTA concluded that the cost of domestic components of the 15 completed LRVs was only 15 percent of the cost of all the components, and that the LRVs were not in compliance.

Siemens petitioned UMTA to reconsider its decision in April 1986. Siemens contended that its chassis had been "manufactured"--not "assembled"--in Sacramento and should be regarded as a domestic component. Siemens further stated that its interpretation of "manufacturing" and of the chassis as a "component" was supported by, among other things, industry practice and UMTA's prior ruling in a Pittsburgh Procurement case that involved the same LRV (built by Siemens) and exactly the same issue. Since the cost of the chassis together with some domestically manufactured components of the LRV body was more than 50 percent of the cost of all the LRV components, the LRVs were in compliance, in Siemens' view.

UMTA denied Siemens' petition, remaining firm in its interpretation that Siemens had "assembled," not "manufactured" the chassis. Meanwhile, SRT challenged UMTA's assumption that the 15 LRVs in question were covered by the act, since they had been paid for entirely out of local funds, in accordance with the July 1985, amendment to the full-funding grant agreement. UMTA also rejected this contention.

## THE SETTLEMENT ISSUE

In November 1986, UMTA, SRT, and Siemens entered into an agreement which included, among other things,

- SRT's and Siemens' acknowledgement that Buy America requirements applied to all 26 LRVs in the contract;
- Siemens' acknowledgement that (given UMTA's interpretation of "manufacturing" and, therefore, of "component") the 15 LRVs it had built were not in compliance with Buy America;
- UMTA's agreement not to enforce compliance with respect to the 15 completed--and locally funded--LRV's; and,
- a compliance plan for the 11 LRVs yet to be built by Siemens, specifically incorporating UMTA's interpretation of manufacturing and component and generally paralleling a compliance plan Siemens had proposed in May 1986.

UMTA officials told us they had several reasons for settling the case in this fashion. In the event of litigation, they felt

- a judge might find that the 15 locally funded LRVs were not bound by Buy America requirements;
- Siemens might have a legitimate issue in the definition of "manufacturing" and "component," particularly in view of UMTA's ruling in the Pittsburgh case;
- it was unlikely that a judge would require the 15 LRVs that were not in compliance to be disassembled and reassembled in the United States simply to convert them into a domestic product; and,
- the delay of litigation would have an enormously detrimental effect on Sacramento's bond rating.

In addition, UMTA had no evidence that Siemens had willfully violated the Buy America requirements. UMTA believed the certificate issue arose from Siemens' honest but mistaken interpretation of the Buy America requirements and the compliance issue, from legitimate confusion over the interpretation of the terms "manufacturing" and "component." UMTA said it was also impressed with Siemens' exercise of good faith in bringing the remaining 11 LRVs into compliance.

In June 1986, UMTA moved to clarify the certificate requirements by amending its regulation. UMTA's Notice of Final Rulemaking acknowledged that the existing regulation did not set forth the actual certificate and that this has caused confusion on the part of bidders in several instances. The regulation was

amended by specifying the actual certificates that must be submitted by each bidder to indicate compliance or noncompliance with the applicable requirements, including Buy America, and by describing the circumstances under which each specific certificate must be submitted. One of the certificates, the "Certificate for Non-Compliance With Section 165(a)," reads:

"The bidder hereby certifies that it cannot comply with the requirements of section 165(a) of the Surface Transportation Act of 1982, but it may qualify for an exception to the requirement pursuant to section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act and regulations in 49 CFR Part 661.7."

In addition, in April 1987, the Congress moved to strengthen the Buy America requirements and also addressed the problems, typified by this case, of interpreting the compliance requirements and ensuring that they were, in fact, being met. Title III, Federal Mass Transportation Act of 1987, of the Surface Transportation and Uniform Relocation Assistance Act of 1987, amends the Buy America provisions of the Surface Transportation Assistance Act of 1982 by (1) phasing in an increase in the domestic content requirement from 50 to 55-percent, effective October 1, 1989, and from 55 to 60-percent, effective October 1, 1991; (2) increasing the cost differential exception from 10 to 25 percent; and (3) adding the term, "subcomponents," to the basic Buy America provision. The conference report accompanying the amendments explains:

"By including the term subcomponents, the conferees intend that major components, systems, or assemblies of buses and rail rolling stock be counted towards meeting the Buy America domestic content standard if the components themselves would meet the domestic content requirement."

The conference report also provides a noninclusive list of "major components" of rail rolling stock.

The 1987 act also adds a requirement for independent preaward and post-delivery audits of rolling stock contracts supported by federal funds, to assure compliance with, among other things, the Buy America requirements (sec. 319), and adds an authorization of funds with which UMTA can contract directly with independent consultants to provide construction management oversight on project construction (sec. 324).

#### Status of Implementation of the Settlement Agreement

UMTA authorized Siemens to resume work in March 1987 and completed a series of on-site reviews of the subcontractor work in late March. UMTA's review and our own contacts with the domestic

subcontractors confirm that the work is proceeding according to the compliance plan.

#### UMTA NOTIFIES SRT OF A NEW VIOLATION

SRT initiated service on its new light rail transit system on March 16, 1987, with 17 LRVs. The 17 LRVs included

- 13 of the 15 locally funded LRVs that UMTA had found in violation of the Buy America requirements, but had agreed not to bring enforcement action on;
- 2 of the 11 federally funded LRVs, incorporating chassis from a "spare parts" stock, exempt from the Buy America requirements under UMTA's regulation;
- 2 federally funded LRVs incorporating chassis that were scheduled for, but had not yet had, domestic input under the compliance plan.

In a letter dated April 21, 1987, UMTA asked SRT whether it was operating two LRVs that were not manufactured in accordance with the compliance plan set forth in the settlement agreement. On April 28, 1987, SRT responded and informed UMTA that it had taken active steps to assume full compliance with the settlement agreement in the shortest time frame consistent with practical limitations for opening the light rail system as scheduled. SRT added that all federally assisted LRVs are now in full compliance with the settlement agreement. UMTA notified SRT on May 11, 1987, of its intention to withhold an amount representing the federal share of the capital cost associated with the two LRVs in question (roughly \$1.3 million, according to an UMTA official), from the SRT grant amendment currently pending, and to reduce the total federal grant for the pending light rail project accordingly.

In response to inquiries from members of the California congressional delegation, the Acting Administrator of UMTA has agreed to delay action on the grant reduction pending his opportunity to review the matter. On July 3, 1987, SRT responded to UMTA's notification letter by setting forth SRT's position that (1) its use of the two LRVs did not violate the terms of the November 1986 Settlement Agreement, and (2) in any event, the proposed penalty is overly harsh and out of character with normal procedures for resolving grant compliance issues.

In its July 3 letter, SRT pointed out that its publicly announced plan to initiate service on its light rail system in March 1987 was based on the terms of the compliance plan at the time of settlement. However, implementation of the compliance plan was delayed for 14 weeks when UMTA initiated an audit of the compliance plan and directed that all remanufacturing work be

halted pending completion of the audit. SRT's letter also stated that it had accepted the Siemens LRVs for testing purposes and later for revenue service on condition that any defects would be corrected before payment was made. Since the absence of remanufactured trucks was noted as a defect at the time of acceptance by SRT, Siemens was held to its obligations under the compliance plan.

In closing its July 3 response, SRT, without conceding the existence of a violation or waiving its right to contest UMTA's finding, asked that UMTA consider alternative remedies more in keeping with the circumstances of the case, including: (1) redesignation of the two LRVs in question as locally funded or (2) reallocation of \$1.4 million in federal funds to other eligible project cost items under the budget-revision procedures of UMTA's Circular No. 5010.1.

As of July 21, 1987, UMTA has suspended action on the funds reduction, but this new case is still unresolved.

## SECTION 2

### CHRONOLOGY

January 6, 1983

The Surface Transportation Assistance Act of 1982, including expansion of the 1978 Surface Transportation Assistance Act Buy America section, is signed into law. Section 165 of the 1982 act provides, with exceptions, that federal funds may not be obligated for mass transportation projects unless steel, cement, and manufactured products used in such projects are produced in the United States. In the case of the procurement of buses and other rolling stock, the Buy America requirement is met if the cost of components that are produced in the United States is more than 50 percent of the cost of all components and final assembly takes place in the United States.

February 11, 1983

Sacramento Transit Development Agency issues a request for technical proposals to manufacture 26 light rail vehicles. STDA is a public entity separate and apart from the city of Sacramento, the county of Sacramento, the Sacramento Regional Transit District, and the state of California. STDA was established to manage the planning and construction (including equipment procurement and contract administration) of the light rail transit project.

April 15, 1983

Siemens-Allis (later known as Siemens Energy and Automation, Inc., an Atlanta, Georgia-based company that is owned by a West German firm) submits a technical proposal that includes (1) a declaration that it will conform to Buy America requirements, (2) an estimate that the U.S. content of the LRVs is approximately 55 percent, and (3) a listing of subsystems and major subsystems that qualify as U.S. content.

July 22, 1983

STDA completes evaluation of technical proposals and releases list of four qualified bidders, including Siemens.

July 29, 1983

STDA issues invitation for bids to manufacture 26 LRVs.

September 15, 1983

The Department of Transportation's (DOT) Urban Mass Transportation Administration (UMTA) Buy America regulation,

effective January 6, 1983, is published in the Federal Register. The regulation requires, among other things, that, as a condition of responsiveness, bidders on contracts for projects funded under UMTA grants must submit with the bid a completed Buy America certificate indicating that the bidder will comply with the requirements of law and regulations. (However, unlike the 1978 STAA regulations, no specific certificate language is included in the 1983 regulations. Nor do those regulations include a specific procedure that a bidder must follow to be considered for a waiver under an available exception.)

If a successful bidder does not comply with its certification, UMTA regulations require that the bidder take the necessary steps to achieve compliance. If a bidder takes these necessary steps, it will not be allowed to change its original bid price. If a bidder does not take the necessary steps, it will not be awarded the contract if the contract has not yet been awarded, and the bidder is in breach of contract if a contract has been awarded. A willful refusal to comply with certification by a successful bidder may lead to the initiation of proceedings to prohibit the contractor from receiving any further contracted work from the federal government.

#### September 16, 1983

Siemens certifies that it will comply with Buy America provisions set forth in law and implementing regulations. Siemens' bid is 9.9 percent below the second lowest bid, 26.1 percent below the third lowest bid, and 44.2 percent below the highest bid. The certificate signed by Siemens conforms to the requirements of UMTA's regulations for the 1978 Buy America provisions. This certificate requires the bidder to list any end products that are not domestic. Since Siemens does not list any foreign end products, its bid is for a domestic vehicle.

#### September 28, 1983

The STDA Board of Directors rejects all LRV bids to avoid lawsuits by the two lowest bidders related to conformance to specifications. STDA decides to rewrite the specifications, revising language concerning compliance with California Public Utilities Commission's safety requirements and to request a second round of technical proposals and bids.

#### September 28, 1983

UMTA and Sacramento Regional Transit District enter into a full-funding grant agreement (which includes standard Buy America clause) to provide federal financial assistance for the construction of a light rail transit project. SRT is a public corporation comprised of the cities of Davis, Folsom, Roseville, Sacramento, Woodland, and certain unincorporated territories in the

counties of Sacramento and Yolo. SRT will own and operate the light rail project being constructed under the management of STDA. Federal financial assistance for the project, authorized under the Interstate Transfer Program, 23 U.S.C. 103(e)(4), will be provided in yearly increments and will total \$88.1 million (85 percent of total project costs).

November 15, 1983

STDA issues a revised request for technical proposals. Although the technical proposal is not to contain any bid price, proposers are required to identify the approximate percentage of U.S. content and delineate those subsystems and major components that qualify as U.S. content. Conformance to Buy America is a formal bid requirement.

December 7, 1983

Siemens submits a revised technical proposal that includes: a declaration that it will conform to Buy America requirements, no estimate as to the approximate percentage of U.S. content, and a listing of the subsystems and major components of subsystems that qualify as U.S. content. Siemens also submits an alternative technical proposal for a vehicle identical in all technical aspects but changes the location of manufacture and assembly from a U.S. location to a West Germany location. Siemens confirms that the Buy America requirement citation is understood and will be met. Siemens makes particular reference to exceptions to Buy America if domestic material increases costs by more than 10 percent.

December 13, 1983

Three months previously, UMTA published a regulation for public comment that provided, in part, that in determining the origin of components, each component must be treated as either entirely domestic or entirely foreign, based on the place where the component is mined, produced, or manufactured. Components of unknown origin must be treated as foreign. The origin of subcomponents is immaterial. One of the commentators, the Railway Progress Institute, proposes that the UMTA Buy America regulation be changed to include, among other things, a list of items generally regarded in the railcar building industry as well defined and recognizable components found in all types of railway rolling stock. The list is more detailed than Siemens' reporting of components. For example, Siemens considers the propulsion motors, gear boxes, truck frame, axles, disc brake equipment, wheels, track brake equipment, journal bearings, and springs to be subcomponents of the truck (i.e., the vehicle undercarriage or chassis) component; whereas, the Institute proposes to define all major chassis parts as separate components of the railcar.

December 21, 1983

STDA issues revised invitations for bids, including a requirement that each bidder shall certify as a condition of responsiveness that it will comply with the Buy America requirements in law and implementing regulations.

January 12, 1984

STDA advises Siemens that it cannot separately qualify a proposal to manufacture in West Germany. STDA advises that such a proposal does not comply with Buy America until and unless the bid price is 10 percent less than the next higher proposal. STDA notes that UMTA has the sole authority to interpret Buy America requirements. However, STDA advises Siemens that it knows of no reason for not pursuing an exception after bid opening--if the 10-percent price difference occurs.

January 17, 1984

Siemens submits a Buy America certificate as part of a bid that is 23.2 percent below that of the only other bidder. Unlike the prior certificate, this pro forma certificate does not provide for listing excluded foreign end products. Thus, it is unclear what form of communication is required for a bidder seeking to produce a foreign end product.

February 2, 1984

STDA and Siemens enter into a \$24.4 million contract for procurement of 26 LRVs, spare parts, and technical services. STDA gives Siemens the notice to proceed.

February 3, 1984

Referring to STDA's letter dated January 12, 1984, which states the basis for the Buy America exception, Siemens requests that STDA file an application with UMTA for a waiver based on the 10-percent price difference and advises STDA that it is contemplating manufacture and assembly of the 26 LRVs at the Duesweg factory in Duesseldorf/Uerdingen, West Germany.

February 3, 1984

SRT's consulting attorney prepares draft Buy America provisions and certificates for use in future contracts.

February 15, 1984

SRT sends UMTA a request for a Buy America exception regarding Siemens' production of 26 LRVs. UMTA regulations provide that a bidder who seeks to establish grounds for an exception must seek

the exception, in a timely manner, through the grantee. Only a grantee may request an exception. The request must be in writing, include facts and justification to support the exception, and be submitted to the UMTA Administrator through the appropriate UMTA Regional Administrator. The UMTA Administrator will issue a written determination setting forth the reasons for granting or denying the exception request.

February 22, 1984

STDA transmits a copy of SRT's request for a Buy America exception to Siemens.

February 28, 1984

Siemens acknowledges to STDA its receipt of SRT's request for Buy America exception, but (because of concern over delays in getting an UMTA ruling) requests either a stopwork order or extension of delivery schedule.

March 2, 1984

SRT's consulting attorney expresses an opinion to the SRT Board of Directors that the waiver request will be denied because of delays in submitting the request and raises the issue whether Siemens intends to perform the contract, as agreed, at a domestic manufacture point.

March 5, 1984

STDA refuses to grant Siemens a stopwork order or an extension of delivery schedule pending UMTA's Buy America waiver decision, taking the position that Siemens had committed to build domestically.

March 19, 1984

Siemens files a notice of potential claim with STDA due to a delay in the Buy America waiver decision. To meet its contractual obligations towards STDA, Siemens represents that it has entered into commitments with subcontractors and has placed material orders for an imported LRV in accordance with its technical proposal and price bid.

April 20, 1984

SRT's consulting attorney submits a draft Buy America provision and certificate to UMTA for review and comment for inclusion in future contract specifications.

May 10, 1984

The Budd Company (now known as Transit America, Inc.), the only remaining American railcar manufacturer, responds to Siemens' request for interest in bidding on a subcontract for final assembly of the 26 LRVs.

May 25, 1984

UMTA advises SRT that it will not grant an exception to the Buy America requirements in regard to Siemens' production of 26 LRVs. UMTA rules that a bidder who certifies that it will comply with Buy America requirements is bound by the certification. UMTA advises that Siemens should have certified that it would not comply with the Buy America requirements and, if its bid was more than 10 percent under the lowest domestic bid, Siemens should have sought the exemption from UMTA prior to the awarding of the contract. (However, the certificate prepared by STDA and used by Siemens in its bid did not include specific language that would have permitted this type of certification.)

May 30, 1984

STDA provides Siemens a copy of UMTA's denial of a request for waiver of Buy America requirements.

June 4, 1984

STDA requests Siemens to provide detailed written explanations, by June 28, 1984, of how it will comply with the domestic manufacture and assembly requirement.

June 6, 1984

Siemens submits a claim to STDA for additional compensation and a 6-month delay in delivering 26 LRVs because of an unexpected change from foreign to domestic manufacture requirements.

June 12, 1984

SRT submits revised Buy America certificates to UMTA for review and comment for inclusion in future contract specifications.

June 21, 1984

STDA informs Siemens that it is unlikely that its request for a contract change order for more money and an extended delivery schedule will be granted. STDA again requests Siemens to provide detailed information to support a Buy America compliance determination.

June 22, 1984

SRT informs UMTA of Siemens' claim and requests that UMTA concur with SRT's position that Siemens is contractually bound to build the 26 LRVs domestically.

June 28, 1984

Siemens acknowledges STDA's request to provide detailed written explanations on how it will comply with the domestic manufacture and assembly requirement.

July 6, 1984

UMTA notifies SRT that it would be inappropriate for UMTA to take a position on the question of which party is responsible for any costs associated with compliance with the Buy America certification or on any other matter of contract interpretation.

July 10, 1984

Siemens' attorney submits a background document to STDA that is designed to explain the basis for Siemens' claim and to serve as a basis for a meeting between the parties and a suitable resolution of the claim by agreement.

July 23, 1984

STDA's attorney responds to Siemens' attorney's request for a meeting by stating that for a meeting to be constructive, a detailed statement of Siemens' claim is needed.

August 2, 1984

UMTA informs STDA's consulting attorney that SRT's draft Buy America clause and certificates are acceptable for future contracts.

August 20, 1984

Siemens submits data to STDA to support its claim, but requested listings of the sources of LRV components and the final assembly site are not provided.

August 31, 1984

STDA acknowledges receipt of Siemens' submission of data to support its claim but notes that requested listings of the manufacturing sources of LRV components and location of the final

assembly site needed to verify Buy America compliance have not been received.

September 13, 1984

Siemens advises STDA that its negotiations with U.S. suppliers and subcontractors are not yet finalized and that it cannot yet provide the requested Buy America compliance information.

October 4, 1984

STDA's attorney advises Siemens' attorney that since Siemens is not willing at this time to present detailed figures to support its claim, it appears prudent for both sides to wait for final resolution of those figures before proceeding further with discussions.

October 15, 1984

Siemens assures STDA that it will soon provide the required proof of compliance with the applicable Buy America provisions.

November 13, 1984

In response to STDA's request of June 4, 1984, Siemens provides STDA a breakdown of U.S. content of the LRVs which totals 52.9 percent. However, 57 percent of the suppliers still are not identified because contract negotiations are still ongoing. Siemens agrees to update this information as contracts are awarded.

November 15, 1984

STDA advises Siemens that it would be profitable to schedule a meeting to start a detailed examination of Siemens' claim.

January 7, 1985

UMTA concurs with SRT's proposed settlement with Siemens to resolve all disputes relating to alleged increased costs due to compliance with Buy America requirements. In order to settle at no additional cost to the project, payments are accelerated as compared to when they would have been done under the contract.

January 18, 1985

Siemens and STDA enter into an agreement to settle Siemens' claim for additional costs associated with confusion over Buy America requirements and the certificate and delay in ruling upon requests for exception to Buy America requirements. The contract dated February 2, 1984, between Siemens and STDA is changed to extend the delivery schedule and to provide for advance payments.

February 26, 1985

UMTA outlines the SRT proposal for financing cost overruns incurred by STDA during construction of the light rail transit system. Restructuring the full-funding grant agreement to transfer federal funding of the LRVs to local funding is a part of this proposal.

April 12, 1985

SRT formally proposes to amend the full-funding grant agreement to remove 16 (subsequently changed to 15) LRVs from the grant so that they may be funded from local sources and used as security against the issue of certificates of participation needed to raise additional project funding.

April 19, 1985

The UMTA Administrator concurs in the conceptual approach to SRT's proposal for financing cost overruns on the light rail project.

May 9, 1985

Siemens obtains advice in a telephone conversation with UMTA's current Deputy Chief Counsel that as long as the manufacturing point and final assembly point are separate and distinct, the Buy America regulations can be fulfilled, notwithstanding the fact that all subcomponents of a component may have been manufactured outside the United States. (This advice, which UMTA has acknowledged, was given in response to a hypothetical case presented by Siemens and was not identified as being a specific question concerning the STDA procurement.)

June 18, 1985

Hill International (UMTA's oversight contractor on the Sacramento project) prepares an internal memorandum that questions Buy America compliance by Siemens in that 80 percent of the LRV cost represents West German manufacture. This memorandum is not shared with SRT or STDA.

June 19-20, 1985

With the anticipated dissolution of STDA in the near future, SRT will assume responsibility for the completion of the Sacramento light rail project. In preparing for its assumption of the responsibility, SRT meets with Siemens and Duesenberg officials and makes in-plant inspections at Dusseldorf and Uerdingen, West Germany. SRT and Siemens address list of problems, including Buy America compliance.

June 27, 1985

SRT requests UMTA to grant a public interest exception to the Buy America requirements for the construction of a prototype LRV at the Duewag plant in Uerdingen, West Germany.

July 2, 1985

Siemens sends SRT component cost data for U.S. manufacture of the LRVs totaling 51 percent to demonstrate Buy America compliance.

July 11, 1985

The full-funding grant agreement is amended to reflect unanticipated increased costs that will result in transfer from federal to local funding for some project activities. Included in this transfer are 15 LRVs. SRT commits nonfederal funds in the amount of \$57.1 million for the project and local activities.

July 15, 1985

Hill International sends UMTA its first monthly report of project management oversight activities, findings, and recommendations. Among the issues reported was Siemens' questionable compliance with Buy America requirements.

July 17, 1985

UMTA concurs in the sale of certificates of participation, and the execution of the related agreements, for financing the capital items specified in such documents and finds that there is no legal or administrative impediment, with respect to UMTA requirements, to the financing.

July 19, 1985

Hill International submits its draft report to UMTA (no copy to SRT) on its phase I project management oversight findings and recommendations, including the question of Siemens' compliance with Buy America requirements.

July 23, 1985

Because UMTA regulations reserve jurisdiction over the determination of whether a vendor is in compliance with Buy America requirements, SRT hand-delivers the UMTA Buy America compliance information that it has obtained from Siemens. The information is discussed with UMTA at the project's quarterly meeting. SRT indicates it has no reason to doubt Siemens' representations, but does not know what is behind the representations.

August 1, 1985

Hill International reports its phase I project management oversight findings and recommendations to UMTA, including Siemens' questionable compliance with Buy America requirements. The Hill report also comments on the total lack of leverage to force contract compliance upon Siemens. The report states that STDA entered into an agreement with Siemens which amended the terms of the contract and made accelerated up-front payments to Siemens. The report also states that STDA has paid Siemens 90 percent of all money due for the manufacture, delivery, and acceptance testing of the LRVs before a single vehicle has been manufactured.

August 8, 1985

UMTA determines that the public interest will be served by granting SRT's requested waiver of Buy America requirements for one prototype LRV that will be manufactured and assembled at the Duewag plant in Uerdingen, West Germany.

August 12, 1985

The Sacramento Transit Development Agency is dissolved and the Sacramento Regional Transit District assumes all responsibilities for the construction of the light rail project.

October 28, 1985

Hill International notifies UMTA that Siemens' representation that complete trucks (i.e., the LRV chassis, including wheels, brakes, and related undercarriage assemblies) have been manufactured and assembled in the United States is inaccurate.

November 21, 1985

UMTA requests that Siemens provide a breakdown of all the components of the LRV by country of origin and by cost. UMTA also requests that Siemens describe the components in sufficient detail to determine if they meet the regulatory definition of "component"; that Siemens provide a detailed breakdown concerning the powered and nonpowered chassis of each car; and that Siemens identify the actual location of the LRV final assembly point, describe the activities that take place at the final assembly point, and identify the costs of final assembly.

December 10, 1985

UMTA and Hill International meet with Siemens and Duewag (chassis manufacturer) and tour the Sacramento LRV final assembly facility and the manufacturing site for the chassis.

January 13, 1986

Siemens provides UMTA information concerning the components, the cost, and description of final assembly, the description of the manufacturing of the chassis, and the breakdown of information concerning the body shell, the air conditioning, and the pantograph.

February 7, 1986

UMTA (for the first time) informs SRT there is a current investigation of Buy America compliance by Siemens at the project's quarterly review meeting.

March 3, 1986

UMTA notifies SRT that Siemens falls substantially below the requirement that 50 percent of the components of the LRVs, by cost, be of domestic origin. UMTA's review of material submitted by Siemens and the site visit conducted in Sacramento indicate that the "manufacturing" of the chassis (which makes up 36 percent of the cost of the LRV) by Duewag at a facility in Sacramento is actually part of "final assembly." UMTA concludes that the work that is done on the chassis in Sacramento is not "manufacturing," that the "subcomponents" of both the powered chassis and the nonpowered chassis are manufactured in West Germany, and that for purposes of application of the Buy America requirements, these "subcomponents" are actually "components" as defined at 49 C.F.R. 661.11(b). UMTA finally concludes that since these "components" are all imported from West Germany, they are all to be included in the calculation of "foreign components" for the LRVs, and therefore are deducted from the calculation of "domestic components." UMTA determines that the assembly of these "subcomponents" at the Duewag manufacturing site does not constitute the "manufacture" of a "component" as contemplated by the regulations (49 C.F.R. 661.11 (e)).

March 6, 1986

The UMTA Administrator is quoted in a local Sacramento newspaper as saying this case is pretty clear cut, is the worst violation of Buy America requirements that UMTA has encountered, and he cannot see how SRT can fix the compliance problem.

March 7, 1986

SRT refers to UMTA's Buy America determination and asks Siemens to develop a plan to resolve the noncompliance issue.

March 10, 1986

UMTA meets with SRT to discuss the Siemens Buy America case.

March 12, 1986

SRT acknowledges receipt of UMTA's determination that Siemens has not complied with Buy America requirements and requests material upon which UMTA relied in making its determination.

March 13-14, 1986

UMTA meets with Siemens and Siemens' attorney (without SRT) to discuss Siemens' plan for complying with the Buy America requirements. Siemens is granted an extension for filing an application for reconsideration and subsequent compliance plan. At its March 13, 1986, meeting with UMTA, Siemens contends that manufacture is not so narrowly construed as to require the actual casting, milling, lathing, or machining of raw materials in the United States.

March 18, 1986

Siemens' attorney offers UMTA a compromise in the hope of finding a mutually agreeable business solution to what otherwise might prove to be a prolonged legal dispute. In tendering this proposal, Siemens notes that it has already delivered to SRT 13 of the LRVs and that chassis for an additional 5 LRVs are already fabricated. Chassis for the remaining 7 LRVs (excludes the one prototype railcar made in West Germany) are as yet unmanufactured. Siemens expresses the view that it would be counterproductive and extremely uneconomical to disassemble the chassis for the 13 LRVs previously delivered and those already fabricated for an additional 5 LRVs and to reproduce those chassis at a site other than that currently employed by Siemens in Sacramento. Siemens' proposal involves the relocation of chassis production for the remaining seven LRVs from the building currently dedicated thereto in Sacramento to an alternative site; and a commitment on the part of Siemens to acquire from domestic sources an agreed upon quantity of parts and assemblies for LRVs to be delivered under contracts that are not otherwise subject to the Buy America provisions of the 1982 STAA. (This plan was not shared with SRT.)

April 1, 1986

Siemens' attorney provides UMTA information relating to payments under Siemens' third-party contract with STDA. SRT reports STDA paid Siemens about 80 percent of the contract amount, including about 52 percent when the contract was changed in January 1985.

April 15, 1986

UMTA rejects Siemens' proposal for a compromise intended to d protracted legal proceedings and address the needs of Siemens, SRT, and UMTA. UMTA states that Siemens' proposal is not a plan

designed to bring Siemens into compliance with the Buy America requirements as they relate to the procurement of LRVs by STDA.

April 18, 1986

Under the Freedom of Information Act, Siemens requests copies of all documents, materials, and reports prepared by Hill International that are related to the Buy America case.

April 18, 1986

Siemens' attorney requests UMTA to reconsider its March 3, 1986, determination that the 26 LRVs currently being furnished by Siemens under a third-party contract between Siemens and Sacramento do not comply with Buy America provisions of the 1982 STAA. Siemens points out that the former UMTA Administrator has on June 29, 1982, expressly determined that chassis are components of LRVs; that chassis are distinct product lines that are installed in railcars as integrated units. Similarly, Siemens argues that its operations performed in Sacramento to produce the chassis are complex and time-consuming and clearly constitute manufacture.

May 2, 1986

UMTA denies Siemens' request for access to the report prepared for UMTA by Hill International.

May 27, 1986

Siemens' attorney submits a proposed compliance plan to SRT. Siemens proposes to produce 10 LRV sets of chassis utilizing the same level of participation by domestic suppliers as in the Pittsburgh procurement (which was ruled in conformance with Buy America by UMTA on June 29, 1982). Siemens states that it understands this offer is consistent with SRT's intent to renegotiate its grant with UMTA so as to encompass within its scope only 11 LRVs (excluding the 15 LRVs purchased with local funds). With the waiver granted for one prototype LRV, all federally funded vehicles would then comply with Buy America requirements under the proposed compliance plan.

May 28, 1986

UMTA takes the position that it is unnecessary, at this time, and therefore declines an SRT request to issue an opinion as to the identity of funds that were used to procure the first 15 LRVs that Sacramento is purchasing from Siemens. UMTA points out that it was clearly understood by all parties that the Buy America requirements would apply to all 26 LRVs, including the 15 being funded with nonfederal funds. UMTA states this understanding was reached because there was a single line item for the procurement of LRVs,

and because Siemens and STDA had already executed a contract which required that all of the LRVs comply with Buy America requirements.

May 28, 1986

SRT sends UMTA the proposed compliance plan developed by Siemens.

May 28, 1986

Moody's Investors Service suspends its outstanding rating on all \$45 million of SRT's outstanding project bonds. The city of Sacramento suspends effort to float \$125 million in new bonds for projects unrelated to the light rail project. According to SRT, these actions are related to the uncertainties caused by the Buy America findings of UMTA.

June 2, 1986

UMTA rejects part of Siemens' proposed compliance plan. UMTA states that to amend the full-funding agreement at this time in a way that would permit those LRVs already manufactured to be released from the Buy America requirements would be nothing more than a de facto waiver of the requirements for those LRVs. UMTA declines to do this. Regarding the remaining 11 LRVs, UMTA states that it appears that such a plan would comply with the Buy America requirements.

June 5, 1986

UMTA Administrator meets with several domestic railcar suppliers, associate members of the American Public Transit Association, and asks for their support in enforcing Buy America requirements in the Sacramento/Siemens case. (Not the sole topic discussed at the meeting.)

June 6, 1986

SRT makes request for access under Freedom of Information Act to a report prepared by Hill International relating to whether or not Siemens is properly complying with Buy America.

June 6, 1986

SRT petitions for reconsideration of the UMTA March 3, 1986, ruling that the 26 LRVs being manufactured by Siemens do not comply with Buy America regulations. SRT objects to being treated as petitioner rather than as grantee. SRT requests reconsideration to permit SRT full and informed participation in the determination process and that UMTA not be permitted to withdraw from financial participation.

June 6, 1986

UMTA prepares background paper pointing out the consequences of not enforcing the law in reference to the Siemens/Sacramento Buy America dispute.

June 13, 1986

UMTA denies SRT's request for access to a report prepared for UMTA by Hill International on whether Siemens is properly complying with Buy America in the manufacture of LRVs in Sacramento.

June 19, 1986

To eliminate confusion on the part of bidders, UMTA amends the regulations implementing the Buy America provision of the 1982 act to include the actual certificates that must be submitted in the future by each bidder to indicate compliance or noncompliance with the applicable statutory and regulatory requirements.

June 20, 1986

SRT's attorney submits a series of excerpts from the July 11, 1985, full-funding agreement and related documents which address the issue of whether there is any remaining federal financial interest in the 15 LRVs.

June 24, 1986

Siemens' attorney submits a plan to resolve any questions of compliance by entering into a series of new subcontractor arrangements to increase the degree of participation by domestic suppliers in the manufacturing process for chassis used in the remaining 10 LRVs.

July 7, 1986

UMTA requests additional information on Siemens proposed compliance plan for 10 LRVs. UMTA restates its position that the Buy America requirement applies to all 26 LRVs and that any acceptance of a plan by UMTA for 10 LRVs in no way relieves Siemens or SRT of their obligations concerning the other LRVs.

July 14, 1986

Siemens submits additional information on its proposed compliance plan relating to the domestic manufacturing process for chassis used in the remaining 10 LRVs.

July 15-16, 1986

UMTA meets with SRT and SRT's attorney to discuss Siemens' proposed compliance plan.

July 30, 1986

Siemens' attorney submits additional information on Siemens' proposed compliance plan for domestic manufacture of chassis. Siemens agrees to include the prototype LRV within the scope of the plan. As a result, the plan now encompasses chassis for 11, as opposed to 10, LRVs.

August 6, 1986

SRT's attorney submits a supplement to SRT's request for reconsideration summarizing the chronology of events and relevant grant clauses that it believes make the Buy America provisions inapplicable to the remaining 15 of the 26 LRVs at issue.

August 19, 1986

SRT's attorney appeals the denial by UMTA of a request for information pursuant to the Freedom of Information Act for a report prepared by Hill International.

August 22, 1986

UMTA Chief Counsel presents two issues, three options, (including one recommended option), and a draft settlement agreement for resolving the Buy America case to the UMTA Administrator. The Chief Counsel's recommended option and the draft settlement agreement are basically what was later agreed to by all involved parties in November.

September 22, 1986

UMTA denies SRT's appeal of a prior UMTA decision denying SRT's request for a report to UMTA by Hill International under the Freedom of Information Act.

October 15, 1986

UMTA circulates copies of the draft administrative settlement agreement to Siemens and SRT for comment. Key congressional staffs are provided with a draft for information only.

October 27, 1986

Congressman Oberstar requests the Secretary of Transportation to report on the status of any proposed agreement between UMTA and Siemens as soon as possible. He expresses concern that UMTA and

Siemens are apparently close to entering into some compromise which falls far short of previous UMTA public statements which pledged full compliance with Buy America, including appropriate sanctions for failure to comply.

November 4, 1986

UMTA's Chief Counsel presents explanation of rationale to UMTA Administrator to support August 22, 1986, recommendations on how to resolve the Buy America case.

November 4, 1986

Railway Progress Institute expresses serious concerns to UMTA about the terms of the draft administrative settlement agreement.

November 7-24, 1986

SRT, Siemens, and UMTA sign an administrative settlement agreement. The agreement establishes for the record that all 26 LRVs are covered by Buy America requirements, a violation of the Buy America statute and regulations has occurred for the 15 locally funded LRVs that had been manufactured and delivered to SRT, UMTA agrees not to enforce compliance for the 15 locally funded LRVs and ratifies a compliance plan limited to the 11 federally funded LRVs.

December 2, 1986

UMTA responds to Congressman Oberstar's letter regarding the settlement agreement. UMTA states the settlement agreement reaches a practical solution that reflects strong enforcement of Buy America and the best interests of the light rail transit project.

December 5, 1986

UMTA informs Siemens of the initial material that UMTA will require to initiate arrangements for such visits as may be necessary to review the implementation of the compliance plan.

December 10, 1986

UMTA asks Siemens to take whatever steps are necessary to ensure that no further work is carried out until UMTA has had the opportunity to review the requested material and to develop a process for reviewing the implementation of the compliance plan.

December 18, 1986

Siemens provides detailed information relating to compliance plan.

January 29, 1987

UMTA provides SRT its fiscal year 1986 federal share of authorized funds for the light rail transit project that was requested by SRT on November 27, 1985. The funds were delayed because of the UMTA Buy America investigation. The cumulative federal funds expended under this grant now total \$84.9 million.

January 30, 1987

UMTA requests Siemens to provide clarification of detailed information on the compliance plan.

February 4, 1987

Siemens provides clarification of detailed information relating to the compliance plan.

February 9, 1987

Siemens submits plan to monitor the work of its suppliers and vendors to assure that each and every aspect of their purchase orders and work programs are completely fulfilled.

February 17, 1987

UMTA requests Siemens to provide additional clarification information relating to the compliance plan.

February 19, 1987

Siemens provides further clarification on the disassembly and reassembly of the gear boxes to be used in the compliance plan.

February 25, 1987

UMTA requests that Siemens provide additional clarification of information relating to the compliance plan.

February 27, 1987

Siemens makes a second request under the Freedom of Information Act for access to copies of all documents, materials, and reports prepared by Hill International that are related to the Sacramento Buy America case.

March 3, 1987

Siemens provides additional clarification related to the cost of gear boxes imported from West Germany and asks that a meeting be scheduled to discuss visits to the domestic chassis component manufacturers.

March 9, 1987

UMTA and Siemens meet to discuss visits to the domestic chassis component manufacturers.

March 11, 1987

UMTA authorizes Siemens to begin implementing the compliance plan and schedules on-site reviews at domestic chassis component manufacturers.

March 16, 1987

The first 9-mile phase of the Sacramento light rail system opens and revenue service commences.

March 23, 1987

Siemens reminds UMTA that it had failed to respond to its second request for the Hill International report on the Sacramento Buy America case.

March 27, 1987

UMTA denies Siemens' second request for access to the Hill International report.

April 2, 1987

The Surface Transportation and Uniform Relocation Assistance Act of 1987 enacted. Title III, Federal Mass Transportation Act of 1987 (1) imposes a requirement for independent preaward and post delivery audits for grants for the purchase of rolling stock used to carry passengers in revenue service to assure compliance with, among other things, Buy America requirements (sec. 319) and (2) adds an authorization of up to one-half of 1-percent of funds appropriated to construct major public transportation projects to be made available to UMTA to contract directly with independent consultants to provide construction management oversight on project construction (sec. 324). Title III also amended the Surface Transportation Assistance Act of 1982 by (1) phasing-in an increase in the domestic content requirement from 50 to 55-percent, effective October 1, 1989, and from 55 to 60-percent, effective October 1, 1991 (any company that has met the existing Buy America requirements would be exempted from the increases for all contracts entered into before April 1, 1992); (2) increasing the cost differential exception from 10 to 25 percent; and (3) adding the term, "subcomponents," to the basic Buy America provision. The conference report accompanying the amendments explains:

"By including the term subcomponents, the conferees intend that major components, systems, or assemblies of

buses and rail rolling stock be counted towards meeting the Buy America domestic content standard if the components themselves would meet the domestic content requirement."

The conference report also provides a noninclusive list of "major components" of rail rolling stock.

April 21, 1987

UMTA advises Siemens that its March 19, 20, and 26, 1987, site visits to three domestic facilities disclosed that Siemens is carrying out the compliance plan as set forth in the settlement agreement and the documents incorporated by reference into that agreement. UMTA expresses the opinion that the activities taking place at these three facilities constitute the manufacture of the chassis. As a result, UMTA considers these chassis, which are components of the LRVs, to be domestic components in calculating whether Siemens meets the 50-percent domestic component test set forth in both the Buy America act and UMTA regulations.

April 21, 1987

UMTA sends SRT a copy of its letter to Siemens that concludes that, at this time, Siemens is carrying out the compliance plan as set forth in the settlement agreement. UMTA also expresses its concern over the number of LRVs SRT currently has in service. UMTA states that it understands that SRT is currently operating 17 LRVs. UMTA presumes that 15 of these LRVs are those not covered by the compliance plan. UMTA requests information concerning the manufacture of chassis for the remaining two LRVs to determine whether those LRVs are in compliance with the requirements of Buy America.

April 28, 1987

SRT informs UMTA that it is currently operating 17 LRVs. SRT states that between March 16, 1987, when revenue service commenced, and April 28, 1987, SRT was operating four LRVs that were neither yet in compliance with the settlement agreement nor locally funded. SRT states those four represent LRVs that SRT had accepted on condition that the chassis would be retrofitted once the domestic replacement arrived. SRT points out that two of those LRVs had spare chassis beneath them and spare parts have a standing waiver under UMTA Buy America regulations. SRT added that those spare chassis will be placed beneath undelivered LRVs to continue testing the LRVs, and that as a result of the UMTA inquiry all four LRVs in revenue service that are not locally funded have had their noncompliant chassis replaced within the last week with compliant chassis that were manufactured in accordance with the compliance plan.

May 8, 1987

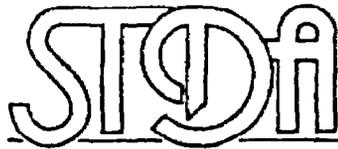
SRT's attorney submits a paper to UMTA addressing SRT's conditional acceptance of four LRVs subject to the November 1986 administrative settlement agreement. In summary, the paper states that SRT has taken active steps to assume full compliance with the settlement agreement in the shortest time frame consistent with practical limitations on opening the light rail system as scheduled, and all federally assisted LRVs are now in full compliance with the settlement agreement.

May 11, 1987

UMTA expresses surprise that SRT deliberately operated two LRVs that neither complied with the terms of the settlement agreement nor with the Buy America requirements. UMTA notifies SRT that the amount representing the capital costs associated with the two LRVs in question will be withheld from the SRT grant amendment currently pending with UMTA, and the total federal grant for the entire light rail project will be reduced accordingly.

July 3, 1987

In a letter to the UMTA Acting Administrator, SRT requests an opportunity to respond to UMTA's May 11, 1987, notification. SRT sets forth its view that (1) its use of the two vehicles did not violate the terms of the settlement agreement; and (2) in any event the proposed penalty is overly harsh and out of character with normal procedures for resolving grant compliance issues. Without conceding the existence of a violation or waiving its rights to contest such a finding, SRT requests UMTA's consideration of alternative remedies more in keeping with the circumstances of the case, including: (1) redesignation of the two cars as locally funded and (2) reallocation of \$1.4 million in federal funds to other eligible project cost items.

CORRESPONDENCE REGARDING WAIVER REQUEST
**SACRAMENTO TRANSIT  
DEVELOPMENT AGENCY**

 926 J Street, Suite 611 • Sacramento, California 95814  
 (916) 442-3168

January 12, 1984

File: 1709

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 (Project Director)  
 1201 I Street, Room 205  
 Sacramento, California 95814  
 (916) 445-6519

**COOPERATING AGENCIES**

City of Sacramento  
 County of Sacramento  
 Department of Transportation -  
 vans  
 Sacramento Regional  
 Transit District

Mr. Doebert, Manager  
 Siemens-Allis, Inc.  
 860 Hinckley Road  
 Burlingame, CA 94010

Dear Mr. Doebert:

In regard to our recent conversations on your proposals, Revised "A" Imp. and Revised "B" Imp., we cannot now qualify these as separate proposals as requested in your letter dated December 7, 1983. These proposals explicitly contemplate manufacture and assembly outside the United States and, therefore, do not comply with Buy America until and unless the bid price is 10 percent less than the next higher proposal.

It should be noted that UMTA, not this Agency, has the sole authority to administrate the Act and interpret the Buy America requirements. As we read the Buy America section of the Surface Transportation Act of 1982, only at the time of bid opening can a determination be made as to the applicability of the Buy America exemption specified in Section 165(b)(4). We know of no reason now for not accepting Section 165(b)(4).

If further clarification is necessary, please contact me at (916) 445-6519.

Sincerely,

A handwritten signature in cursive script, appearing to read 'R. P. Weaver'.

R. P. WEAVER  
 Deputy Project Director

cc: JWS  
 CBeach  
 CPrim  
 WQuintin  
 RFranzen

RPW/jf

**SIEMENS-ALLIS**

Industrial Equipment Marketing Division

Siemens-Allis, Inc.  
860 Hinckley Road  
Burlingame, California 94010  
(415) 657-6851 Telex WU3-9321Mr. James E. Roberts  
Sacramento Transit Development Agency  
Room 205  
1201 "I" Street  
Sacramento, CA 95814

December 7, 1983

Subject: RFTP No. 83-03-Revised  
Vehicle Procurement

Proposal "Revised-A-LMP"

Gentlemen:

With reference to Para. 1.2.2 of your Request for Technical Proposal we hereby submit our proposal "Revised-A-LMP" for 26 Light Rail Vehicles with all electric braking system (RACO). The vehicle is identical in all technical aspects to our detailed proposal "Revised-A". Only the location of manufacture and assembly is changed from a US location to a West German location.

With respect to Para. 1.3.3, subsection (1.4) of your RFTP we hereby confirm that the "Buy America" requirement citation is understood and will be met. Reference is made in particular to the Surface Transportation Assistance Act of 1982, Section 165 (b) (4).

With respect to Para. 1.3.3, Subsection (1.5) of your RFTP we hereby confirm that the DBE requirement is understood and will be met, Title 23, Sec 23.67

We respectfully request that you qualify this proposal.

Very truly yours,

SIEMENS-ALLIS, INC.  
Industrial Equipment  
Marketing Division

Helmut G. Doebert  
Division Manager

HGD:gl

MAJOR CONTRIBUTORS TO THIS FACT SHEET

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General

San Francisco Regional Office

Doris Weber Jensen, Site Senior

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