



FTA's Oversight of SEPTA's Compliance With Buy America Rolling Stock Requirements Faced Several Challenges

Requested by the Ranking Members of the House Committee on Transportation and Infrastructure

Federal Transit Administration | ZA2024033 | July 31, 2024

What We Looked At

In 2017, the Southeastern Pennsylvania Transportation Authority (SEPTA) awarded a \$138 million contract to the state-owned China Railway Rolling Stock MA Corporation (CRRC MA) for 45 passenger railcars. In 2022, three then-ranking Members of the House Transportation and Infrastructure Committee asked our office to examine the Federal Transit Administration's (FTA) oversight of (1) SEPTA's certification of CRRC MA's adherence to FTA's Buy America requirements and (2) SEPTA's calculation of the total value of foreign components for determining compliance with FTA's Buy America requirements. As such, our objective was to assess FTA's oversight of SEPTA's compliance with Buy America standards for its rolling stock contract with CRRC MA.

What We Found

Weaknesses in FTA's Buy America guidance hindered its oversight of SEPTA's compliance with Buy America rolling stock requirements. Specifically, FTA does not require recipients to retain supporting documentation for pre-award audits or to verify suppliers' Buy America information, nor does FTA have regulations to address domestic shipping costs. Without clear guidance, FTA could not rely on SEPTA to provide oversight of rolling stock procurements and risks that recipients miscalculate domestic content costs—raising concerns about whether FTA's Buy America rules are being met. In December 2022, FTA initiated an enhanced compliance review of SEPTA to verify compliance with Buy America rolling stock standards, but the Agency faced challenges in obtaining sufficient data from both SEPTA and CRRC MA. Although FTA suspended funds for the CRRC MA contract, the absence of policy on when to initiate an enhanced Buy America compliance review and take corrective action, limits the Agency's ability to address delays or compliance issues on future FTA-funded projects.

Our Recommendations

We made eight recommendations to improve FTA's oversight of SEPTA's compliance with Buy America rolling stock requirements and FTA's oversight of future rolling stock procurements. FTA concurred with recommendations 1 through 6. FTA partially concurred with recommendations 7 and 8 and provided alternative actions that meet the intent of our recommendations. We consider all recommendations resolved but open pending completion of planned actions.

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Memorandum

Date: July 31, 2024

Subject: ACTION: FTA's Oversight of SEPTA's Compliance With Buy America Rolling Stock Requirements Faced Several Challenges | Report No. ZA2024033

From: Carolyn J. Hicks *Carolyn J. Hicks*
Assistant Inspector General for Acquisition and Procurement Audits

To: Federal Transit Administrator

Domestic content laws—or Made in America Laws¹—promote U.S. manufacturing and products in order to support American industries. Specifically, under Chapter 49 of the United States Code (U.S.C.) Section 5323(j), funds may not be obligated for a project unless the steel, iron, and manufactured goods used in the project are produced in the United States. However, when procuring rolling stock,² there is a statutory waiver³ that applies if (1) the cost of components⁴ and subcomponents⁵ produced in the United States meets certain percentages as prescribed by law and (2) final assembly⁶ of the rolling stock has occurred in the United States.

In 2022, three then-ranking Members of the House Transportation and Infrastructure Committee sent a letter to our office raising concerns about the

¹ Per Executive Order 14005 § 2.b, "Made in America Laws" include all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods offered in the United States.

² Chapter 49 of the Code of Federal Regulations (C.F.R.) § 661.3 defines rolling stock as: "transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services."

³ 49 U.S.C. § 5323(j)(2)(C).

⁴ 49 C.F.R. § 661.11(c) defines a component as any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an end product at the final assembly location.

⁵ 49 C.F.R. § 661.11(f) and (h) define a subcomponent as any article, material, or supply, whether manufactured or unmanufactured, that is one step removed from a component in the manufacturing process and is incorporated directly into a component. A subcomponent is of domestic origin if it is manufactured in the United States.

⁶ 49 C.F.R. § 661.11 Appendix D sets out minimum requirements for final assembly. Final assembly typically includes the following operations: installation and interconnection of propulsion control equipment; propulsion cooling equipment; brake equipment; energy sources for auxiliaries and controls; heating and air conditioning; communications equipment; motors, wheels, and axles; suspensions and frames; the inspection and verification of all installation and interconnection work; and the in-plant testing of the stationary product to verify all functions.

Southeastern Pennsylvania Transportation Authority (SEPTA)—specifically, SEPTA’s compliance with the Federal Transit Administration’s (FTA) Buy America rolling stock requirements.⁷ According to their letter, in 2017, SEPTA awarded a \$138 million contract to the state-owned China Railway Rolling Stock MA Corporation (CRRC MA)⁸ for 45 new passenger railcars.⁹ Citing an article in the *Philadelphia Inquirer*,¹⁰ the Members questioned whether CRRC MA had met FTA’s Buy America requirements for rolling stock procurements over the course of this contract and if the company will continue to do so as the contract progresses. The Members also expressed concern because CRRC MA secured more than \$2.6 billion in U.S. transit contracts to provide railcars for the cities of Philadelphia, Boston, Chicago, and Los Angeles. Further, the congressional request cited a concern with the threat to U.S. transportation manufacturing from Chinese state-owned and supported enterprises (SOEs) noting that the National Defense Authorization Act for Fiscal Year 2020 (NDAA) prohibits the use of Federal transit funds to purchase rolling stock from SOEs. However, SEPTA is one of four transit agencies¹¹ that were granted an exemption to this regulation.¹²

Given their concerns, the Members asked our office to review SEPTA’s ongoing contract with CRRC MA. As part of their request, the Members specifically asked our office to examine FTA’s oversight of (1) SEPTA’s certification of CRRC MA’s adherence to FTA’s Buy America requirements and (2) SEPTA’s calculation of the total value of foreign components for the purpose of determining compliance with FTA’s Buy America requirements. Regarding the latter part of the Members’ request, we learned that, in response to Congressional interest,¹³ FTA is conducting its own compliance review of SEPTA’s rolling stock procurement, which includes recreating Buy America domestic content calculations for the CRRC MA contract. As such, our objective for this audit was to assess FTA’s

⁷ Letter to the Inspector General from Representatives Sam Graves, Eric “Rick” Crawford, and Rodney Davis of the House Committee Transportation and Infrastructure and its Subcommittees on Highways and Transit and Railroad, Pipelines, and Hazardous Materials, dated September 21, 2022.

⁸ CRRC MA is a subsidiary of its parent company, CRRC Corporation Limited (CRRC), which is headquartered in Beijing, China. CRRC MA was established in Boston, MA in 2014.

⁹ As of January 4, 2024, current project costs were estimated to be \$185 million.

¹⁰ Thomas Fitzgerald, *A first glimpse of SEPTA’s new double-decker Regional Rail cars, under construction in China*, The Philadelphia Inquirer, July 20, 2022.

¹¹ The other exempted transit agencies are: Chicago Transit Authority, Los Angeles County Metropolitan Transportation Authority, and Massachusetts Bay Transportation Authority.

¹² According to the NDAA, 49 U.S.C. § 5323(u)(5)(A) shall not apply to the award of any contract or subcontract made by a public transportation agency with a [restricted rail rolling stock manufacturer] if the manufacturer and the public transportation agency have executed a contract for rail rolling stock before the date of enactment of the subsection (December 20, 2019). The SEPTA-CRRC MA contract was signed in 2017.

¹³ Beginning in July 2022, according to FTA, it received outreach from House Transportation and Infrastructure staff regarding social media reports about the CRRC MA railcars and their compliance with Buy America rolling stock requirements—which prompted FTA to launch its comprehensive review. Later, on September 28, 2022, FTA’s Administrator received a letter from the then-Committee Chair Peter A. DeFazio citing similar concerns.

oversight of SEPTA's compliance with Buy America standards for its rolling stock contract with CRRC MA. We also kept apprised of FTA's ongoing review. While SEPTA terminated its contract with CRRC MA on April 2, 2024, we completed the audit and issued this report given the significant findings and recommendations warranting FTA's attention.

We conducted this audit in accordance with generally accepted Government auditing standards. Exhibit A details our scope and methodology. Exhibit B lists the organizations we visited or contacted, and exhibit C lists the acronyms used in this report.

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions concerning this report, please contact me or Darren L. Murphy, Program Director.

cc: The Secretary
DOT Audit Liaison, M-1
FTA Audit Liaison, TBP-30

Results in Brief

Weaknesses in FTA's Buy America guidance hindered its oversight of SEPTA's compliance with Buy America rolling stock requirements.

First, FTA does not require the retention of documentary support for pre-award Buy America audits—despite FTA regulations that pre-award audits include a review of the manufacturer's rolling stock documentation. According to FTA, the Agency does not require recipients or third-party auditors to retain any documentation from the pre-award audit in order to maintain confidentiality regarding manufacturers' cost data. However, without this documentation, FTA and SEPTA have no assurance as to the quality and thoroughness of the pre-award audit work performed. Second, while FTA's Handbook says manufacturers are responsible for ensuring that suppliers comply with Buy America requirements, FTA does not specifically require recipients or manufacturers to verify the Buy America information that suppliers provide. FTA's Handbook calls for manufacturers (e.g., CRRC MA) to demonstrate their process for verifying suppliers' compliance with Buy America—which may take the form of obtaining certifications or other documentation from the suppliers. However, while CRRC MA's process was to obtain certificates from its suppliers, it was unable to provide the Buy America certifications for some of them. Moreover, we were unable to verify the addresses of some of CRRC MA's suppliers. Without requirements for recipients or third-party auditors to verify the information from suppliers, FTA may not be able to rely on SEPTA to ensure Buy America compliance. Third, FTA Buy America regulations and guidance do not address how to account for domestic shipping costs when calculating domestic content percentages. Without clear guidance for this calculation, FTA risks inconsistencies in how manufacturers decide to include or exclude domestic shipping costs, which could affect whether a component or subcomponent meets the requirements to achieve Buy America compliance percentages.

FTA's enhanced compliance review has been hampered by a lack of responsiveness from SEPTA and CRRC MA.

FTA typically relies on its triennial reviews,¹⁴ oversight procedures under its Project Management Oversight program,¹⁵ and grantee pre-award and

¹⁴ The Triennial Review is one of FTA's management tools for examining recipient performance and adherence to current FTA requirements and policies. Mandated by Congress in 1982, the Triennial Review occurs once every 3 years.

¹⁵ FTA's Oversight Procedure 36 describes the review, analysis, and recommended procedures and reporting requirements that FTA expects its project management oversight contractors to follow when evaluating Buy America compliance.

post-delivery audits¹⁶ to ensure Buy America rolling stock standards are met. However, when deemed warranted—as in the case of SEPTA—FTA may also choose to do a more detailed investigation of Buy America compliance. FTA initiated its enhanced compliance review of SEPTA in December 2022. According to FTA, its review includes pricing components, regulations for domestic content for sub-components, exchange and shipping rates, and requirements for final assembly, physical verification of supporting data and documentation, and computing the domestic and foreign content of the railcars. In its review, FTA has faced challenges in obtaining sufficient and accurate data from both SEPTA and CRRC MA. In February 2024, FTA suspended SEPTA’s ability to draw funds for the CRRC MA contract, citing SEPTA’s failure to satisfactorily show that the railcars comply with Buy America, and gave SEPTA 30 days to produce documentation.¹⁷ SEPTA subsequently terminated its contract with CRRC MA on April 2, 2024. Nonetheless, FTA still plans on completing its review and may have the opportunity to take further corrective action, as authorized under the Uniform Administrative Requirements¹⁸ for Federal grants, such as pursuing remedies for any unallowable costs. However, we note that FTA lacks policies or guidance detailing when to initiate Buy America rolling stock compliance reviews and apply the corrective actions (i.e., specific conditions and remedies for noncompliance) described in the Uniform Grant Guidance. As a result, the Agency limits its ability to promptly address potential delays or compliance issues on future FTA-funded projects.

We are making recommendations to improve FTA’s oversight of SEPTA’s compliance with Buy America rolling stock requirements and FTA’s oversight of future rolling stock procurements.

Background

Between October 2014 and October 2021, FTA awarded \$90.5 million to SEPTA to procure railcars from CRRC MA, of which SEPTA has spent more than \$55 million as of January 2024. As a recipient of FTA grant funds, several Federal requirements within the U.S. Code (U.S.C.)¹⁹ and the Code of Federal Regulations

¹⁶ The SEPTA-CRRC MA contract did not reach the post-delivery phase so a post-delivery audit has not been conducted. Per FTA’s Handbook, the post-delivery audit period is the “time period in the procurement process from when the rolling stock is delivered to the recipient until title to the rolling stock is transferred to the recipient or the rolling stock is put into revenue service, whichever is first.”

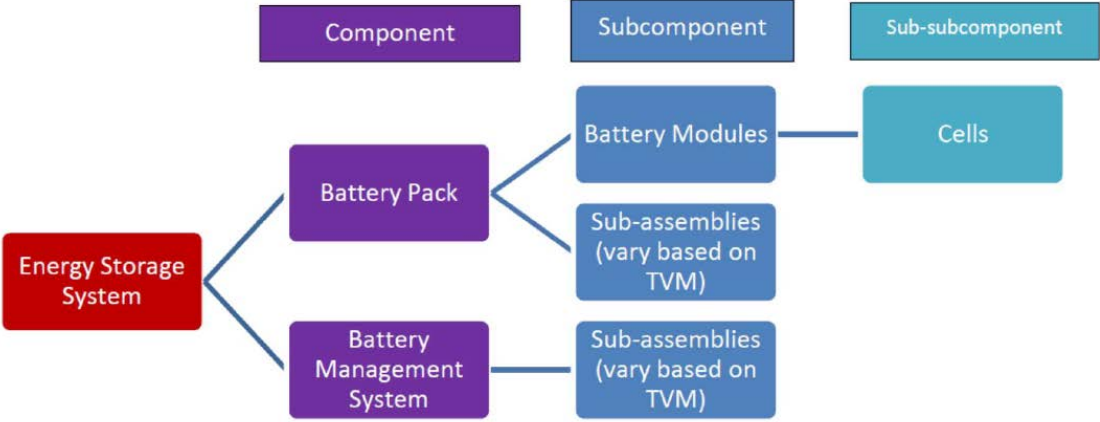
¹⁷ FTA granted SEPTA a 10-day extension to produce documentation with a final due date of April 3, 2024.

¹⁸ 2 C.F.R. Part 200 contains the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance).

¹⁹ 49 U.S.C. § 5323(j)(2).

(C.F.R.)²⁰ govern SEPTA’s rolling stock procurement of railcars from CRRC MA. See exhibit D for a timeline on the CRRC MA procurement. For instance, to be of domestic origin, the cost of the components and subcomponents for rolling stock produced in the United States must total more than 60 percent, and final assembly of rolling stock must occur in the United States.²¹ As an example of how components and subcomponents create an end product, see the figure below. See exhibit E for an illustration of what a domestic content computation entails.

Figure. Example of Components and Subcomponents in an Energy Storage System²²



Note: According to FTA’s report, TVM stands for transit vehicle manufacturers.

Source: FTA’s Buy America Compliance Review of Battery-Electric Buses Report, December 2020

FTA relies on triennial reviews, pre-award and post-delivery Buy America audits,²³ and Buy America oversight procedures carried out by FTA’s project management oversight contractors (PMOCs) to ensure Buy America rolling stock standards are met. In addition, FTA has established guidance for rolling stock procurements titled, “Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements—Best Practices Handbook for Recipients, Auditors, Manufacturers,

²⁰ 49 C.F.R. § 661.11-Buy America Requirements-Rolling Stock Procurements; 49 C.F.R. § 663-Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.

²¹ 49 C.F.R. § 661.11 (a) and (g).

²² According to FTA, this example is somewhat different than the SEPTA rolling stock procurement given that it pertains to a specialized system for electric buses and involves a sub-subcomponent. Per FTA, this is not a system found in a conventional railcar.

²³ See 49 U.S.C. § 5323(m) and 49 C.F.R. § 663.15.

and Suppliers” (Handbook).²⁴ This guidance includes recommendations for calculating Buy America domestic content percentages, along with suggested best practices for the recipient, auditor, and manufacturer during the pre-award and post-delivery phases of a rolling stock procurement. For example, to assist recipients with validating manufacturers’ domestic content calculations, FTA’s Handbook provides a sample domestic content calculation spreadsheet intended to verify that (1) all domestic and foreign content is accounted for and (2) the costs are calculated in accordance with 49 C.F.R. § 661.11. However, the guidance also states that, “while FTA does not require the use of these best practices, FTA does encourage all parties to adopt such procedures and processes to the extent they will help achieve compliance.”

In addition, Federal regulations require a number of Buy America-related certifications. For example, recipients (e.g., SEPTA) must require bidders (e.g., CRRC MA) to certify compliance with Buy America rolling stock requirements as a condition of receiving FTA grant funds for purchasing rolling stock.²⁵ Also, recipients must certify compliance with Buy America, as well as conduct pre-award and post-delivery audits of rolling stock. For the CRRC MA contract, SEPTA relied on a third-party consultant, AtkinsRéalis (Atkins, also formerly SNC-Lavalin), to (1) conduct the pre-award audit and (2) review CRRC MA’s calculations of the total value of domestic and foreign components and subcomponents. SEPTA also relied on Atkins for assistance in overseeing production of the railcars. See table 1 for a description of FTA’s pre-award requirements for the CRRC MA rolling stock contract.

²⁴ January 2017.

²⁵ 49 C.F.R. § 661.13(b).

Table. FTA’s Buy America Pre-Award Certification and Audit Requirements for SEPTA’s Rolling Stock Contract With CRRC MA

Requirement	Description	Completed By
Certification of Compliance with Buy America Rolling Stock Requirements (49 C.F.R. § 661.12)	Certifies that the bidder or offeror will comply with the requirements of 49 U.S.C. 5323(j) , and the applicable regulations of 49 C.F.R. 661.11 .	CRRC MA
Pre-Award Buy America Certification ^a (49 C.F.R. § 663.25)	Certifies that the recipient is satisfied that the products, materials, and components to be used in the project meet Buy America requirements after having reviewed documentation provided by the manufacturer ^a which lists (1) component and subcomponent parts of the rolling stock to be purchased (identified by manufacturer of the parts, their country of origin and costs); and (2) the location of the final assembly, including a description of the activities that will take place at the final assembly point and the cost of final assembly.	SEPTA
Pre-Award Purchaser’s Requirements Certification (49 C.F.R. § 663.27)	Certifies that (1) the rolling stock the project proposer is contracting for is the same product described in the purchaser’s solicitation specification and (2) the manufacturer is a responsible party that has the capability to produce a vehicle that meets specifications.	SEPTA
Pre-Award Audit ^b (49 C.F.R. § 663.21; § 663.23)	Confirms whether the recipient keeps on file the Pre-Award Buy America Certification and the Pre-Award Purchaser’s Requirements Certification. ²⁶	Atkins

^a The Pre-Award Buy America certification indicates that there is a letter from FTA which grants a waiver to the rolling stock to be purchased from Buy America requirements or that the recipient is satisfied that the rolling stock meets Buy America requirements. Federal regulations call for a review of the manufacturer’s documentation to be conducted by either the recipient or through an audit prepared by someone other than the manufacturer.

^b FTA’s Handbook provides a more detailed description of what a pre-award audit may entail. For example, according to the Handbook, the recipient, or an auditor acting on the recipient’s behalf, will review the supporting cost documents to verify the estimated domestic content. However, FTA does not require recipients to follow the Handbook’s guidance.

Source: Code of Federal Regulations

²⁶ And where applicable, a “Pre-Award Certification of Compliance with or Inapplicability of Federal Motor Vehicle Safety Standards.” However, that certificate is not applicable to the CRRC MA contract.

Gaps in FTA's Guidance Hindered Its Oversight of SEPTA's Compliance With Buy America Rolling Stock Requirements

Several weaknesses in FTA's guidance limited its oversight of SEPTA's Buy America compliance. First, we found that FTA requires recipients or their third-party auditors to conduct a pre-award audit but does not require recipients, third-party auditors, or manufacturers to retain and verify any documentation supporting the audit. Second, FTA states that manufacturers are responsible for ensuring their suppliers comply with Buy America but does not require recipients or manufacturers to verify the suppliers' compliance. Further, FTA has regulations to account for shipping costs for foreign components when calculating domestic content percentages but does not address domestic shipping costs.

FTA Does Not Require Recipients To Retain Supporting Documentation for Buy America Pre-Award Audits

As a condition of receiving FTA grant funds for the purchase of rolling stock, recipients must conduct a pre-award audit and certify their Buy America compliance.²⁷ After reviewing FTA's requirements for Buy America rolling stock, we found that SEPTA completed the pre-award audit and required certificates.²⁸ For the pre-award audit, SEPTA relied on its third-party consultant (Atkins) to conduct the required audit. However, FTA does not require recipients or its auditors to retain any workpapers, formal or informal notes, or other records to support the pre-award audit. Instead, FTA suggests only that manufacturers "may" maintain records of the information and documentation for the audit, even though Federal regulations generally require the retention of records for a certain period of time.²⁹ Further, FTA's Handbook says that manufacturers should be mindful that FTA may audit a rolling stock procurement's compliance with Buy America and suggests, as a "best practice," that manufacturers maintain detailed records of the information and documentation shared with the recipient,

²⁷ 49 C.F.R. § 663.7.

²⁸ Though a minor issue, we noted that the titles and verbiage of SEPTA's two certifications were switched with each other.

²⁹ Specifically, 2 C.F.R. § 200.334 requires the retention of financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award for a period of 3 years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency.

particularly for the post-delivery audit. However, without actual requirements for recipients, third-party auditors, or manufacturers to retain pre-award or post-delivery audit documentation, the lack of audit evidence hinders FTA's ability to evaluate and validate Buy America compliance for rolling stock procurements.

In its Handbook, FTA explains that the purpose of the pre-award audit is to ensure that the vehicles delivered by the manufacturer will comply with Buy America and the contract specifications. According to Federal regulations, the pre-award audit involves confirming whether required pre-award certifications are in place (see table 1 in the Background). Of those certifications, the Pre-Award Buy America certification calls for a review of the manufacturer's rolling stock documentation, including (1) a list of the components and subcomponents for rolling stock to be purchased (identified by the manufacturer of the parts, their country of origin, and costs); and (2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly. However, FTA has no requirements or standard process in place regarding how to review the manufacturer's rolling stock documentation. In the absence of such requirements, FTA's Handbook provides several suggested best practices and checklists for conducting the pre-award audit. However, the Handbook is only guidance; FTA does not require recipients to follow it.

According to the pre-award audit, the auditor's work included a review of CRRC MA's domestic content worksheets, cost data, suppliers' Buy America information, and final assembly location and costs. However, according to an Atkins official, there are no workpapers, formal or informal notes, or other records to support the pre-award audit. When we asked SEPTA if they took steps to verify the audit work performed, an Agency official told us that, "SEPTA reviews audit reports for completeness and, if appropriate, raises questions based on information available to SEPTA."³⁰ Yet, according to FTA, recipients are required to review the audit report and certify they are satisfied that the rolling stock to be purchased meets the Buy America requirements. Moreover, this determination is to be based on the audit providing a list of components and subcomponents (and associated costs), by country of origin as well as the location, description, and cost of final assembly. In addition, Atkins conducted an interim audit to provide FTA and SEPTA updated information on the domestic content as suppliers changed or were contracted after the pre-award audit.³¹ Similar to the pre-award audit, an

³⁰ SEPTA also stated that its "Procurement Manual requires that rolling stock procurements follow the requirements of 49 [C.F.R. §] 661.11 and 49 [C.F.R. Part] 663. SEPTA follows the FTA handbook "Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements." SEPTA maintains a copy of Buy America Audit Reports and any submitted certifications."

³¹ Atkins' interim audit report was issued in March 2021. It is important to note that there is no Federal requirement to conduct an interim audit.

Atkins official told us that they did not maintain any workpapers, notes, or other records for the interim audit.

Without requirements that define how to review manufacturers' rolling stock documentation or requirements for retaining supporting documentation to verify the pre-award audit results, FTA and SEPTA had no assurance as to the quality and thoroughness of the work performed to determine Buy America compliance. For example, Atkins' pre-award audit—conducted 6 years earlier—stated that “the description of the workspace to be performed at the Springfield facility satisfies the final assembly requirements. Estimated cost data for the final assembly work was also provided during the audit as required. The labor hours and costs appeared consistent with the described work scope for this type of vehicle.” However, in conducting its ongoing enhanced Buy America compliance review, FTA found that, as of February 23, 2024, CRRC MA had not provided SEPTA with supporting documentation describing final assembly activities in sufficient detail to determine compliance.

In its Handbook, FTA states that there is no requirement that the recipient or its auditors obtain copies of the documents; they need simply to review them. The Handbook goes on to explain that the reason FTA does not require recipients or auditors to retain supporting audit documentation is to maintain confidentiality regarding manufacturers' cost data³² and that the manufacturer may require the auditor to sign a nondisclosure agreement prior to reviewing the documents. Yet, without supporting documentation from the pre-award audit of CRRC MA, FTA could not be sure as to whether evidence for the final assembly costs exists or how Atkins came to its audit conclusion.

Additionally, according to a SEPTA official, SEPTA was not able to review the cost information contained in the pre-award audit because it did not have a nondisclosure agreement with CRRC MA. We confirmed that the Atkins auditor had signed a nondisclosure agreement with CRRC MA but SEPTA had not. As such, only the Atkins auditor was allowed to see CRRC MA's cost information, thus positioning SEPTA to rely solely on what was written in the audit report. We asked those officials if it would be beneficial to have SEPTA sign its own nondisclosure agreement with CRRC MA to gain more transparency and provide better oversight. In response, they said they hadn't thought about it before since they relied on Atkins but were open to the idea.

Without having the same level of access as their third-party auditors to manufacturers' Buy America documentation to verify work performed on pre-award (and by extension, post-delivery) audits, SEPTA was ill-positioned to

³² Specifically, FTA's rolling stock guidance states that, “the recipient's final pre-award and post-delivery audit reports will not include confidential and proprietary information shared with the recipient or its auditor. Rather, the report is likely to include a list of components and their domestic content as a percentage.”

ensure Buy America compliance on the CRRC MA contract. SEPTA's lack of visibility into CRRC MA's Buy America documentation, coupled with no requirements for how to review manufacturers' rolling stock documentation or for maintaining supporting audit documentation, weakened FTA's ability to rely on SEPTA to provide oversight of rolling stock procurements.

FTA Does Not Require Recipients To Verify Suppliers' Buy America Information

According to FTA's Handbook, the manufacturer is responsible for ensuring that suppliers comply with Buy America requirements and should demonstrate its process for verifying suppliers' compliance with Buy America. The guidance goes on to say this could involve the use of certification forms or other documentation or information from suppliers. If manufacturers opt to use a certification form, FTA's Handbook provides a "Sample Buy America Supplier Certification" and suggests that, as a best practice, manufacturers should require their suppliers to complete a Buy America supplier certificate for any item for which domestic content is being claimed. However, FTA does not require suppliers to use the form or require recipients or manufacturers to validate suppliers' Buy America certification information; and, as previously discussed, conformance with FTA's guidance is nonbinding.

According to an FTA official, "while grantees may choose to take additional steps to verify supplier costs, grantees typically rely on third-party auditors to review supplier information, including supplier certificates." In addition, FTA's Handbook suggests that, while not required to, the manufacturer may consider a number of actions to verify suppliers' compliance with the pre-award audit and Buy America requirements. Those actions include but are not limited to conducting supplier qualification reviews (e.g., via site visits) and detailed reviews of supplier documents. CRRC MA officials told us that they had obtained Buy America certificates from its suppliers to verify compliance. However, based on our analysis of the CRRC MA supplier information, we identified several issues that could negatively impact FTA's confidence that suppliers met Buy America requirements.

- **CRRC MA was unable to readily produce certifications for some of its suppliers.** We asked CRRC MA to provide a listing of its suppliers, along with their Buy America certifications. In response, we received certificates for most but not all of CRRC MA's suppliers. After following up on the missing certificates, CRRC MA then provided certificates or other documentation for some of the missing suppliers. However, based on our

analysis, it appeared that some of the certificates were recently signed or created and backdated.

- **We could not validate the information contained in some of the supplier certificates provided to us.** Our analysis included a review of names, signatures, and addresses listed on suppliers' certificates, as well as other validation techniques. However, we identified inaccurate supplier addresses and names, and other inconsistencies. We have referred these issues to FTA for their review.
- **Some suppliers' certificates indicated inconsistencies in what domestic content information was reported.** According to the pre-award audit, the auditor noted that suppliers' interpretations of the methodology to complete the Buy America certification forms were inconsistent. Moreover, the Atkins auditor stated in the report that, "suppliers who present their own attestations or modify the language or forms create questions regarding their methods of measurement and their understanding of the requirements." This concern mirrors what we found when we reviewed the domestic content calculation summaries in the suppliers' Buy America certifications.

As previously stated, FTA's Handbook provides a suggested form to certify suppliers' Buy America compliance. The form collects data points including but not limited to: (1) a list of each component and its subcomponents, (2) identification of components by name and/or part number traceable to the subject procurement, (3) the manufacturing location for each component and subcomponent, and (4) domestic percentages for each component and subcomponent. However, we noticed a lack of completeness in how the suppliers reported domestic content information and percentages. Our analysis revealed that some suppliers listed locations for subcomponents with foreign content while others did not.

In addition, because FTA's Buy America regulations and Handbook do not mention hardware as a component,³³ we asked SEPTA what policy or guidance was used to account for the hardware. In response, a SEPTA official told us that there is not a specific practice or FTA document detailing how to account for hardware in Buy America calculations, whether for components or subcomponents. However, the SEPTA official also told us that hardware is typically calculated as part of a component instead of a stand-alone separate

³³ According to FTA, the Appendix C to 49 C.F.R. § 661.11, "Typical Components of Rail Rolling Stock," is intended to be a representative list and not a complete list of rail rolling stock components. Items not contained on the Appendix C list should be treated according to the component and subcomponent definitions contained earlier in this document.

component as shown in the domestic content summary. The lack of guidance on how to account for hardware when it is presented as a stand-alone component can lead to different interpretations for computing domestic content calculations.

We also noted that, in order for domestic subcomponents to retain their domestic identity when included in foreign components, pursuant to FTA regulations, domestic subcomponents shall not be subjected to tariffs.³⁴ Yet when we inquired with SEPTA, they responded that it was not possible to separate tariffed and non-tariffed subcomponents at the time of the pre-award and interim audits and did not elaborate. See exhibit F for an illustration of how accounting for a tariff exemption could impact a domestic content computation.

In a final, related issue, we identified inconsistencies in how suppliers may invoke a public interest waiver³⁵ through which certain foreign-produced subcomponents are considered of domestic origin.³⁶ Our analysis revealed at least one invocation of this public interest waiver. After bringing it to the Agency's attention, FTA told us that the subcomponent did not qualify for the public interest waiver and should not have been used. As a result, the domestic content percentage would have to be recomputed.

We attempted to determine how much FTA funding has been used to pay CRRC MA's suppliers. In response to our inquiry, SEPTA stated that CRRC MA would be able to advise what has been paid to its suppliers. However, CRRC MA stated that it has received \$30.8 million from SEPTA³⁷ but does not know how much of the money was funded by FTA. In addition, CRRC MA did not provide any documentation to verify how the \$30.8 million was spent amongst its suppliers. Given the multiple issues we identified involving CRRC MA-provided supplier certificates, we question their accuracy and reliability for confirming Buy America compliance. As a result, we question the \$30.8 million in contract costs due to inadequate documentation for the supplier certificates discussed above³⁸ and the improper use of a public interest waiver.³⁹

³⁴ Per 49 C.F.R. § 661.11(i) and (j), if a subcomponent manufactured in the United States is exported for inclusion in a component that is manufactured outside the United States and it receives tariff exemptions under the procedures set forth in 19 C.F.R. § 10.11 through 10.24, the subcomponent retains its domestic identity and can be included in the calculation of the domestic content. Conversely, if the subcomponent does not receive tariff exemption under the procedures set forth in 19 C.F.R. § 10.11 through 10.24, the subcomponent cannot be included in the domestic content calculation.

³⁵ Per 49 C.F.R. § 661.7 Appendix A (b), "a general public interest waiver from the Buy America requirements applies to microprocessors, computers, microcomputers, or software, or other such devices, which are used solely for the purpose of processing or storing data. This general waiver does not extend to a product or device which merely contains a microprocessor or microcomputer and is not used solely for the purpose of processing or storing data."

³⁶ 49 C.F.R. § 661.7(f).

³⁷ As of January 31, 2024.

³⁸ 5 U.S.C. § 405(a)(4)(B).

³⁹ 5 U.S.C. § 405(a)(4)(A).

Without complete and verified supplier information, FTA could not rely on SEPTA to ensure suppliers met Buy America requirements. The issues we noted with the suppliers' certifications highlight the importance of this concern. When we asked FTA whether there were any impediments to requiring that suppliers use a standardized form for certifying their Buy America compliance, FTA officials indicated that there were none. The lack of policy or guidance for verifying suppliers' Buy America information limited FTA's assurance that Buy America compliance is met on not only the SEPTA-CRRC MA contract, but on future rolling stock contracts as well.

FTA's Buy America Guidance Does Not Address Domestic Shipping Costs for Calculating Domestic Content Percentages

According to Federal regulations, transportation costs to the final assembly location must be included in calculating the cost of foreign components and subcomponents. While FTA's Buy America regulations address transportation costs for foreign components and subcomponents, neither the regulations nor FTA's Handbook provide direction as to whether transportation (e.g., shipping costs) should be factored into calculating the cost of domestic items. As a result, recipients and manufacturers are left to make their own interpretations as to how to account for those costs, which could impact Buy America calculations.

How and when to incorporate domestic shipping costs into domestic content calculations can affect the cost of each individual component and therefore affect the results of the calculations for the railcar. Depending on how much the domestic shipping would cost, factoring domestic shipping could be a determining factor as to whether a component or subcomponent meets the 60 percent requirement for the CRRC MA contract. See exhibit G for an illustration of how including or excluding domestic shipping costs could impact domestic content percentage calculations.

When we asked if SEPTA's understanding of domestic shipping costs is based on any specific FTA guidance, an official responded that its consultant is "not aware of any FTA documentation that is explicit about domestic transportation costs." In addition, an FTA official commented that the regulations and guidance on domestic shipping are limited. The absence of policy or guidance for domestic shipping for rolling stock components and subcomponents leaves the topic open to interpretation. For example, an Atkins official said that they only account for international shipping of foreign components and subcomponents to the final assembly place since FTA guidance does not address domestic shipping. In

comparison, SEPTA told us that “for foreign and domestic components, shipping costs are included in the cost of the component or subcomponent.”

We asked FTA if domestic shipping guidance could be added to FTA’s Handbook to provide recipients and manufacturers with more instruction on domestic content calculations, and the Agency responded it will consider whether additional clarity is needed in future updates to its regulation. However, without more specific guidance or direction from FTA regarding domestic shipping costs, the Agency runs the risk that recipients, independent auditors, and manufacturers have different interpretations and inconsistencies in calculating domestic content costs—thereby raising serious concerns about whether FTA’s Buy America rules are being met.

FTA’s Enhanced Compliance Review Has Been Hampered by a Lack of Responsiveness From SEPTA and CRRC MA

On December 21, 2022, FTA informed SEPTA that the Agency would be conducting an enhanced compliance review of the SEPTA procurement of CRRC MA railcars. According to FTA, the purpose of the review is to verify compliance with Buy America domestic content requirements by analyzing the breakdown of the components and subcomponents and their associated costs, and by verifying that vehicle manufacturers accurately report the selected components’ domestic content. The review will also examine whether the grantee has complied with the requirements to conduct pre-award and post-delivery audits and has procedures and processes in place to verify Buy America compliance for rolling stock prior to delivery, installation, and payment to the contractor. Yet to date, the Agency has been unable to determine whether the subject rolling stock procurement is compliant with the Buy America requirements due to several factors such as obtaining sufficient and accurate documentation from both SEPTA and CRRC MA.

In general, FTA’s oversight of Federal Buy America requirements typically occurs through triennial reviews⁴⁰ conducted by contractors within the Comprehensive Oversight Review and Technical Assistance Program and Buy America reviews conducted by PMOCs. However, by regulation, FTA may also investigate Buy America compliance at the petition of a third party or, in appropriate

⁴⁰ According to FTA, the triennial reviews include a series of Buy America-related questions, including how grantees (1) ensure compliance with Buy America rolling stock provisions, (2) conduct pre-award and post-delivery audits, (3) verify domestic content, and (4) verify final assembly activities and location. SEPTA was found to be compliant for FTA’s 2017 and 2021 triennial reviews.

circumstances, at its own discretion.⁴¹ According to an FTA official, FTA does not often conduct enhanced compliance reviews and there are normally extenuating circumstances. In this case, it is because CRRC MA was a new entrant to the market as well as the prevailing congressional interest. When we asked FTA what distinguishes enhanced compliance reviews from routine compliance reviews, the Agency explained that FTA's staff and identified PMOCs are the reviewers and will recompute the domestic content calculations. However, there is no specific guide for enhanced compliance reviews or when to initiate them. When we asked how many reviews FTA had conducted in total, Agency officials told us that the only other enhanced compliance review conducted in recent years was a heavy-duty battery electric bus review, which commenced in 2018 and was completed in 2020 with publication of the final report. In that review, FTA determined that all manufacturers reviewed were in compliance with Buy America regulations.

FTA anticipates completing its enhanced compliance review of the SEPTA-CRRC MA contract by late August 2024. However, FTA has encountered several roadblocks to obtaining sufficient and accurate data to conduct its review of CRRC MA's Buy America domestic content percentage calculations. For example, according to FTA, SEPTA did not receive documentation from CRRC MA describing final assembly activities in sufficient detail to make a final assembly compliance determination. In addition, according to FTA, neither SEPTA nor CRRC MA provided a satisfactory response regarding FTA's concerns about CRRC MA's final assembly plans, including what activities would be involved and CRRC MA's specific work instructions for the Tianjin, China and Springfield, MA, facilities.

Further, FTA told us that CRRC MA was often resistant when responding to requests for documentation, lacked sufficient documentation, or provided voluminous amounts of irrelevant documentation that make it difficult to identify specific items for review—all of which has led to significant delays in FTA's enhanced compliance review. For example, in June 2023, FTA informed CRRC MA that, based on the information provided thus far, CRRC MA had not demonstrated Buy America compliance for the SEPTA railcars. As a corrective action, FTA required that CRRC MA clearly demonstrate how domestic content is derived from the total cost of materials; the suppliers' certificates of Buy America compliance; and the invoices, shipping costs, tariff exemptions, currency exchange rate, and other relevant cost documentation in such a manner that FTA can ascertain the accuracy of the claimed amount. At the time, FTA also told CRRC MA that, "to the extent FTA's review cannot make progress, due to

⁴¹ According to 49 C.F.R. § 661.15, if FTA elects to investigate the compliance of a successful bidder or offeror with the bidder's or offeror's certification, the Agency will request that the grantee require the successful bidder or offeror to document its compliance with its Buy America certificate. The successful bidder or offeror has the burden of proof to establish that it is in compliance. Documentation of compliance is based on the specific circumstances of each investigation, and FTA will specify the documentation required in each case.

unavailability of records or missing information, FTA will take appropriate measures to ensure Federal funds are not directed to unallowable costs, until such time as compliance can be ascertained, or noncompliance can be remedied.”

Throughout its review, FTA provided numerous opportunities for SEPTA and CRRC MA to provide information showing Buy America compliance for over a year and did not receive satisfactory responses. This situation ultimately prompted FTA to take further action, as authorized under the Uniform Administrative Requirements (2 C.F.R. Part 200). These requirements empower FTA to impose “specific conditions” and take different “remedies for noncompliance” to address compliance issues under the grant. For example, FTA can require additional project monitoring, withhold further Federal awards for the project, or wholly or partly suspend or terminate the Federal award.

On February 23, 2024, after more than a year of seeking satisfactory documentation showing Buy America rolling stock compliance on the SEPTA-CRRC MA contract, FTA suspended SEPTA’s ability to draw funds for the CRRC MA effort. The Agency sent SEPTA a letter stating that the Agency “is without confidence that the multi-level railcars comply with Buy America.” As such, FTA requested information that was still missing and gave SEPTA 30 days to produce documentation.

On April 2, 2024, in response to FTA’s request for documentation, SEPTA stated that “certain requested information is within CRRC MA Corporation’s sole possession and therefore cannot be provided by SEPTA.” In addition, SEPTA said that they requested information from CRRC MA, but CRRC MA declined the request. According to SEPTA, CRRC MA claimed that they uploaded the subject information to FTA and Atkins. However, SEPTA told FTA that they were unable to verify the adequacy of CRRC MA’s response.

Prior to FTA’s request for documentation, on February 15, 2024, SEPTA notified CRRC MA of its failure to perform services within the contract’s time frames and its breaches of the contract’s conditions. In its letter, SEPTA required CRRC MA to remedy or take steps to remedy all breaches and defaults to SEPTA’s satisfaction within 30 days. According to SEPTA, CRRC MA failed to remedy those breaches, and SEPTA terminated its contract with CRRC MA on April 2, 2024.

Despite the contract termination, FTA still plans to complete its enhanced compliance review. The Agency also continues to have several options to pursue remedies. For example, FTA retains the right to a proportionate share of any proceeds derived from SEPTA’s recovery against CRRC MA, based on the percentage of the Federal share awarded for the project. In this event, SEPTA may work with FTA to return any liquidated damages recovered to its project account in lieu of returning the Federal share to the Federal Government. SEPTA also remains subject to the terms of the grant agreement with FTA, and FTA may

pursue remedies available to it for unallowable costs as set out in the grant agreement and the Uniform Administrative Requirements (2 C.F.R. Part 200)—including deobligating the \$35.5 million in remaining funds on the SEPTA grant.

According to FTA, the Agency must make a finding of noncompliance before it can initiate actions to either require a recipient to cure the noncompliance or to initiate remedies relating to noncompliant activities. However, we note that FTA does not have policies or guidance detailing when to initiate enhanced Buy America compliance reviews and apply the corrective actions (i.e., specific conditions and remedies) found in the Uniform Administrative Requirements. Although FTA eventually suspended funds for the CRRC MA contract, the absence of policy or guidance on when to initiate enhanced Buy America compliance reviews and apply specific conditions or remedies limits FTA's ability to promptly address potential delays or compliance issues on future FTA-funded projects.

Conclusion

Effective stewardship of the \$90.5 million awarded to SEPTA largely depended on FTA's ability to rely on SEPTA to ensure CRRC MA's compliance with Buy America requirements. While FTA has some Buy America rolling stock oversight processes and guidance in place, we identified significant weaknesses in them. By increasing focus on the issues identified in this report, including pre-award audit documentation, suppliers' certifications, and domestic content calculations, FTA will be better positioned to ensure grantees responsibly manage their use of Federal taxpayer dollars.

Recommendations

To improve FTA's future oversight of rolling stock procurements, we recommend that the Federal Transit Administrator:

1. Initiate actions to establish requirements for recipients (or third-party auditors) for how manufacturers' rolling stock documentation will be reviewed when conducting pre-award and post-delivery audits.
2. Initiate actions to establish requirements for recipients (or third-party auditors) to maintain pre-award and post-delivery audit documentation in a manner that protects manufacturers' sensitive data while also providing supporting evidence of the work described in the audit.
3. Amend FTA's Master Agreement to clarify that recipients must obtain the same level of access as third-party auditors would have to confidential

information to improve oversight and transparency into manufacturers' adherence to Buy America rolling stock requirements.

4. Initiate actions to establish requirements for recipients (or their auditors) to document their verification of suppliers' Buy America information.
5. Develop and implement Buy America policies or guidance as to how to account for hardware and domestic shipping costs when computing domestic content percentages.
6. Develop and implement Buy America policies or guidance detailing when to initiate Buy America rolling stock compliance reviews and apply the corrective actions (i.e., specific conditions and remedies for noncompliance) described in the Uniform Grant Guidance.

To address FTA's oversight of the Southeastern Pennsylvania Transportation Authority's (SEPTA) compliance with Buy America rolling stock requirements for the China Railway Rolling Stock MA Corporation (CRRC MA) contract, we recommend that the Federal Transit Administrator:

7. For the \$30.8 million in questioned costs relating to CRRC MA suppliers' certificates, work with SEPTA to confirm Buy America compliance for those suppliers and determine if any amount is unsupported or unallowable under Buy America rules. Should any amount be found to be unsupported or unallowable, provide a justification for accepting the costs or take appropriate corrective actions.
8. Complete FTA's enhanced Buy America review and take correction actions as deemed necessary to address any instances of noncompliance with Buy America rolling stock requirements on the CRRC MA contract, including but not limited to deobligating unexpended funds. Implementing this recommendation could put up to \$35.5 million in funds to better use.

Agency Comments and OIG Response

We provided FTA with our draft report on May 20, 2024, and received its response on June 27, 2024, which is included as an appendix to this report. FTA concurred with recommendations 1 through 6 and provided appropriate planned actions and completion dates. FTA partially concurred with recommendations 7 and 8 because SEPTA has canceled its contract with CRRC MA. The Agency's proposed alternative actions meet the intent of recommendations 7 and 8. Therefore, we consider all 8 recommendations resolved but open pending completion of planned actions. Additionally, on June 3, 2024, the Agency

submitted evidence to support closing recommendation 3 and requests that OIG close the recommendation within 30 days of issuing the final report.

Actions Required

We consider all recommendations resolved but open pending completion of the planned actions.

Exhibit A. Scope and Methodology

This audit was conducted between March 2023 and May 2024. We conducted this audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Our objective for this congressionally requested audit was to assess FTA's oversight of SEPTA's compliance with Buy America standards for its rolling stock contract with CRRC MA. During this audit we conducted site visits to Philadelphia, Pennsylvania and Springfield, Massachusetts to meet with officials located at FTA's Region 3, SEPTA and CRRC MA offices. Additional meetings with officials from FTA Headquarters and SEPTA's third-party contractor, Atkins, were done remotely.

The scope of this audit encompassed a review of 4 FTA Federal grants that were awarded to SEPTA for a total current value of \$90,543,715. Those funds were used for a single contract between SEPTA and CRRC MA, which we reviewed. In addition, we also reviewed the third-party contract agreement between SEPTA and Atkins.

To assess FTA's oversight of SEPTA's compliance with Buy America standards for its rolling stock contract with CRRC MA, as well as to assess FTA's internal controls for ensuring Buy America rolling stock compliance, we reviewed (1) relevant criteria and guidance; (2) relevant oversight mechanisms (e.g., triennial reviews, single audit reports); and (3) the pre-award and interim audit reports prepared by Atkins. In addition, we reviewed electronic copies of domestic content self-certifications for CRRC MA's suppliers. We also interviewed officials from FTA, SEPTA, Atkins, and CRRC MA to understand each office's role and responsibilities for ensuring Buy America compliance and determine actual practices. As part of those interviews, we inquired as to how compliance with Buy America requirements was monitored and reported. In addition, to verify our findings, we conducted multiple follow ups with FTA, SEPTA, Atkins, and CRRC MA officials. As part of our fieldwork, we reviewed confidential supplier information provided to us by CRRC MA as part of this audit. Details have been omitted from the report as this information is proprietary information that is protected from public disclosure.

Exhibit B. Organizations Visited or Contacted

DOT Facilities

Federal Transit Administration Headquarters

Federal Transit Administration Region 3

Office of the Secretary

Other Organizations

AtkinsRéalis

Chicago Transit Authority

China Railway Rolling Stock MA Corporation

Los Angeles County Metropolitan Transportation Authority

Massachusetts Bay Transportation Authority

Office of Management and Budget

Pennsylvania Department of Transportation

Southeastern Pennsylvania Transit Authority

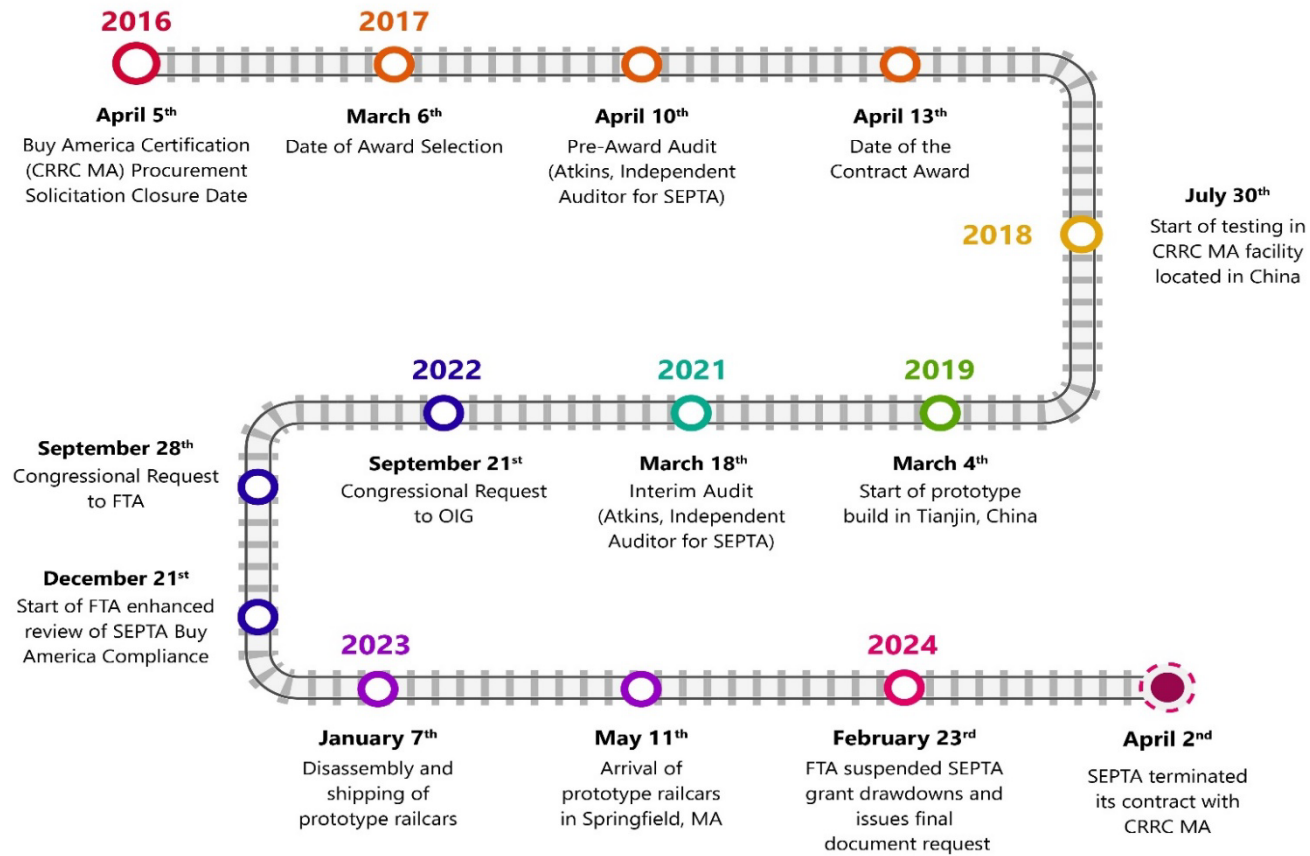
U.S. Government Accountability Office

Exhibit C. List of Acronyms

C.F.R.	Code of Federal Regulations
CRRC	CRRC Corporation Limited
CRRC MA	China Railway Rolling Stock MA Corporation
CUI	Controlled Unclassified Information
DOT	Department of Transportation
FTA	Federal Transit Administration
NDAA	National Defense Authorization Act
OIG	Office of Inspector General
PMOC	Project Management Oversight Contractor
SEPTA	Southeastern Pennsylvania Transportation Authority
SOEs	State-Owned and Supported Enterprises
TVM	Transit Vehicle Manufacturer
U.S.C.	United States Code

Exhibit D. CRRC MA Timeline

CRRC MA Contract Procurement Timeline



**Prior to Termination of Contract*

November 29, 2024 - Anticipated dates of final acceptance of prototypes
 November 27, 2025 - Expected timeline for completing production of railcars

Source: OIG analysis

Exhibit E. Example of FTA 60/40 Rule Application

	Manufacturing Location	Material Costs		Subcomponent % of Component Material Cost		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Cost (if only 1 component)	
		U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1 (before)									
Subcomponent 1.1	U.S.	\$10,000		20%	0%				
Subcomponent 1.2	U.S.	\$20,000		40%	0%				
Subcomponent 1.3	Foreign		\$20,000	0%	40%				
Total subcomponent costs		\$30,000	\$20,000	60%	40%				
Total component cost	\$50,000					\$30,000	\$20,000	60%	40%
Component 1 (after applying FTA's 60/40 rule)									
Subcomponent 1.1	U.S.	\$10,000		20%	0%				
Subcomponent 1.2	U.S.	\$20,000		40%	0%				
Subcomponent 1.3	Foreign		\$20,000	0%	40%				
Total subcomponent costs		\$30,000	\$20,000	60%	40%				
Total component cost	\$50,000					\$50,000	\$0	100%	0%

- Before FTA's rule is applied, the component shows 60% of domestic content and 40% of foreign content.
- After FTA's rule is applied, the component shows 100% of domestic content and no foreign content.
- This simplified example is based on having only 1 component for the vehicle. These percentages would be further modified by the values of the other components.

Source: OIG analysis

Exhibit F. Example of FTA Tariff Exemption Rule

	Manufacturing Location	Material Costs		Subcomponent % of Component Material Cost		U.S. Content by Cost	Foreign Content by Cost
		U.S.	Foreign	U.S.	Foreign		
Component 1 (includes a subcomponent with a tariff exemption)							
Subcomponent 1.1	U.S./tariff exempt	\$10,000		20%	0%		
Subcomponent 1.2	Foreign		\$20,000		40%		
Subcomponent 1.3	Foreign		\$20,000		40%		
Total subcomponent costs		\$10,000	\$40,000	20%	80%	\$10,000	\$40,000
Total component cost	\$50,000						
Component 1 (after removing domestic content credit for unsupported tariff exemption)							
Subcomponent 1.1	U.S.		\$10,000		20%		
Subcomponent 1.2	Foreign		\$20,000		40%		
Subcomponent 1.3	Foreign		\$20,000		40%		
Total subcomponent costs		\$0	\$50,000	0%	100%		
Total component cost	\$50,000					\$0	\$50,000

- If a subcomponent manufactured in the United States is shipped and then returned as a subcomponent of a foreign component, then the foreign component receives domestic content credit for that subcomponent if it received a tariff exemption.
- If the grantee's reviews are performed without sufficient supporting information, the domestic content would not be accredited and therefore reduced from 20% to 0%.

Source: OIG analysis

Exhibit G. Example of FTA 60/40 Rule With Consideration of Domestic Shipping Costs

	Manufacturing Location	Material Costs		Subcomponent % of Component Material Cost		U.S. Content by Cost	Foreign Content by Cost	Component % of Vehicle Cost (if only 1 component)	
		U.S.	Foreign	U.S.	Foreign			U.S.	Foreign
Component 1 (with domestic shipping costs and applying the 60/40 rule)									
Subcomponent 1.1	U.S.	\$10,000		20%	0%				
Subcomponent 1.2	U.S.	\$19,000		38%	0%				
Subcomponent 1.3	Foreign		\$20,000	0%	40%				
U.S. Shipping costs		\$1,000		2%					
Total subcomponent costs		\$30,000	\$20,000	60%	40%				
Total component cost	\$50,000					\$50,000	\$0	100%	0%
Component 1 (without domestic shipping costs)									
Subcomponent 1.1	U.S.	\$10,000		20.4%	0%				
Subcomponent 1.2	U.S.	\$19,000		38.8%	0%				
Subcomponent 1.3	Foreign		\$20,000	0%	40.8%				
Total subcomponent costs		\$29,000	\$20,000	59.2%	40.8%				
Total component cost	\$49,000					\$29,000	\$20,000	59%	41%

- After FTA’s rule is applied to a component with shipping costs, the component shows 100% of domestic content and 0% of foreign content.
- Without the shipping costs included and not applying FTA’s rule, the component cost is reduced and shows 59% domestic content and 41% foreign content.

Source: OIG analysis

Exhibit H. Major Contributors to This Report

DARREN MURPHY	PROGRAM DIRECTOR
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Appendix. Agency Comments



U.S. Department of
Transportation

**Federal Transit
Administration**

MEMORANDUM

Subject: INFORMATION: Management Response – FTA Oversight of SEPTA’s Compliance with Buy America Requirements for Rolling Stock Date: June 27, 2024

From: Veronica Vanterpool *Matthew J. Welles* for the Acting Administrator Federal Transit Administration Reply to Attn. of: Joe Gillis (212) 668-2182

To: Carolyn J. Hicks
Assistant Inspector General for Acquisition
and Procurement Audits

The Federal Transit Administration (FTA) is committed to ensuring that federal award recipients comply with FTA’s Buy America rolling stock requirements. FTA conducted its own compliance review of Southeastern Pennsylvania Transportation Authority’s (SEPTA) rolling stock procurement and its compliance with Buy America requirements, which included a review of the \$138 million contract to the state-owned China Railway Rolling Stock MA Corporation (CRRC MA) for 45 new passenger railcars. SEPTA terminated its contract with CRRC MA on April 2, 2024.

FTA’s oversight of recipient compliance with Buy America requirements is consistent with the Uniform Administrative Requirements, and FTA has implemented several oversight procedures to assure recipients comply with Buy America requirements:

- FTA’s Comprehensive Oversight Reviews, Triennial Reviews, and State Management Reviews require an assessment of recipient compliance with Buy America requirements.
- FTA requires pre-award certifications and audits and post-delivery audits of recipient compliance with Buy America requirements.
- FTA’s project management oversight contractors conduct Buy America reviews to ensure Buy America rolling stock standards are met.

Based on our review of the draft report, FTA concurs with recommendations 1 through 6 as written and partially concurs with recommendations 7 and 8. FTA plans to complete actions to implement recommendations 1, 2, 4, and 5 by September 30, 2026, and recommendation 6 by July 31, 2025. On June 3, 2024, FTA provided OIG evidence to support the closure of recommendation 3 and requests that OIG close the recommendation within 30 days of issuing the final report.

FTA partially concurs with recommendations 7 and 8 as SEPTA has cancelled its contract with CRRC MA. OIG recommended FTA to (7) work with SEPTA to confirm Buy America compliance for those suppliers and determine if any amount is unsupported or unallowable under Buy America rules for the \$30.8 million in questioned costs relating to CRRC MA suppliers' certificates and (8) complete FTA's enhanced Buy America review and take corrective actions as deemed necessary to address any instances of noncompliance with Buy America rolling stock requirements on the CRRC MA contract, including redirecting \$35.5 million in unexpended funds. To meet the intent of these two OIG recommendations, FTA will take actions to address the appropriate treatment of \$35.5 million in unexpended FTA funds and funds provided to the project to date as they relate to the contract's cancellation, including the \$30.8 million in questioned costs, by September 30, 2024. FTA will complete its enhanced Buy America review by August 30, 2024.

We appreciate the opportunity to review the OIG draft report. Please contact Joe Gillis, FTA's Acting Audit Liaison Program Manager, at (212) 686-2182 with any questions.

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