



U.S. Department  
Of Transportation  
**Federal Transit  
Administration**

Headquarters

1200 New Jersey Avenue S.E.  
Washington DC 20590

DEC 8 2015

Ms. Grace Crunican, General Manager  
San Francisco Bay Area Rapid Transit District  
300 Lakeside Drive, 23rd Floor  
Oakland, CA 94612

Re: *Buy America Compliance Investigation Report: BART Contract No. 15TD-250, FTA  
Project No. CA-54-0023*

Dear Ms. Crunican:

This is the final decision of the Federal Transit Administration (FTA) in the above-captioned matter. For the reasons stated below, FTA has determined that MERMEC Inc. (MERMEC) has met its burden of proving that it is compliant with its FTA Buy America Certificate, submitted with its bid to the San Francisco Bay Area Rapid Transit District (BART) for the procurement of a track geometry car, pursuant to Contract No. 15TF-250.

#### Background

On June 17, 2015, BART awarded a contract to MERMEC for a track geometry car using funds from FTA Project No. CA-54-0023. BART Contract at Attachment 3. The track geometry car is a self-propelled, diesel electric powered rail vehicle whose primary function is to measure curvature, alignment, elevation, rail corrugation and wear. The car also detects that the rail tracks are accurate. Each track geometry car produced is unique and customized for each client. Buy America Pre-Award Desk Review at 6. According to MERMEC, the track geometry car is essential for showing that BART meets the FTA's requirements for maintaining a track system in a state of good repair and for performing rail repair projects. BART Contract at Attachment 4. As part of its bid, MERMEC submitted a Buy America Certificate of Compliance. BART Contract Attachment 5.

In addition to MERMEC, two other companies submitted bids for this procurement: Plasser American Corporation and ENSCO Rail, Inc. (ENSCO). On July 1, 2015, ENSCO requested, pursuant to 49 CFR § 661.15, that the FTA initiate a formal investigation into whether BART's contract award to MERMEC for a track geometry car complied with Buy America. In support of its request for an investigation, ENSCO submitted copies of MERMEC's Designation of Subsuppliers and DBEs Form, which indicated that at least \$1,600,000 of components, including the car body structure and components for measuring and inspection systems for the track geometry car, will be manufactured outside of the United States. In its petition, ENSCO alleged that because MERMEC provided information that the car body structure and components

for measuring and inspection systems were not manufactured in the U.S., that MERMEC would not be able to meet the Federal requirement that the domestic content of the track geometry car must exceed 60 percent. 49 CFR § 661.11.

Pursuant to 49 C.F.R. § 661.15, FTA presumes that a bidder or offeror that submits a certificate of Buy America compliance with its bid or offer is, in fact, complying with FTA's Buy America requirements. However, because it was not clear from the information submitted by MERMEC in support of its bid whether the track geometry car would meet the Buy America requirements in 49 U.S.C. § 5323(j)(2)(C), FTA initiated this investigation pursuant to 49 CFR § 661.15 on August 12, 2015. On August 27, 2015, BART notified FTA that it authorized MERMEC to respond directly to FTA regarding the investigation.

To assist with the investigation, FTA hired a contractor to conduct the equivalent of a pre-award audit to determine whether MERMEC could establish that the vehicle it proposed for BART would comply with FTA's Buy America regulation. Under FTA's direction, the contractor conducted the equivalent of a pre-award Buy America audit, which is required for the purchase of rolling stock to carry passengers in revenue service (*see* 49 CFR § 663.21), but is not required for other rolling stock vehicles. On October 27, 2015, FTA's contractor visited MERMEC's facility in West Columbia, South Carolina, and conducted a desk audit of MERMEC's documentation. The FTA and its contractor reviewed the following documents:

- MERMEC's Buy America Certification for BART's Track Geometry Car Procurement;
- Complete list of components, with country of origin, and costs provided in U.S. dollars, summing into the total cost of MERMEC's bid price to BART for the car;
- Contact information for all component suppliers;
- Basis of Assumptions included in the MERMEC bid price to BART including quantities of components and/or subcomponents, methodology used in determining domestic content, and the source of cost information from component and subcomponent suppliers;
- MERMEC's Final Assembly Plan for production of the end product, the track geometry car;
- Buy America certifications from component manufacturers;
- Calculations of domestic content that are greater than 60% for components including a list of subcomponent suppliers, countries of origin, and unit pricing summing into the unit price for a single component system;
- Basis of Assumptions included in the component suppliers' prices including the quantities of subcomponents, the methodology used in determining domestic content, and the source of cost information from subcomponent suppliers;
- Final Assembly plans for all component manufacturers; and
- Shipping costs in U.S. dollars for any foreign component or subcomponent.

#### Legal Framework for Buy America

Pursuant to FTA's authorizing statute at 49 U.S.C. § 5323(j)(2)(C), when procuring rolling stock, which includes support vehicles,<sup>1</sup> the cost of components and subcomponents produced in the United States must be more than 60 percent of the cost of all components and final assembly must take place in the United States. A component is defined as "any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an end product at the final assembly location." 49 CFR § 661.11(c). Moreover, when federal funds are used to purchase rolling stock, the supplier must sign a Certificate of Compliance with FTA's Buy America requirements. 49 CFR § 661.12.

As a condition of receiving FTA funds for the project, BART agreed to be bound by these requirements through FTA's Master Agreement.

### Decision

Based upon the foregoing, I find that MERMEC has demonstrated that it will comply with Buy America requirements for the BART track geometry car. Based on the information MERMEC provided, FTA, through its contractor, was able to independently verify that the cost of components and subcomponents produced in the United States will be more than 60 percent of the cost of all components of the rolling stock and finally assembly will occur in the United States. 49 U.S.C. § 5323(j)(2)(C)(i) & (ii).

The FTA's contractor verified MERMEC's domestic content percentage by examining the domestic content calculations.<sup>2</sup> The contractor found that MERMEC accurately reported its calculations on the Total Contract Price sheet and the Total Material Cost worksheet. From this information, the contractor was able to verify the domestic content percentage of the car components as well as the domestic and foreign price ratio. The contractor also examined a list of MERMEC's U.S.-based suppliers that will likely provide components and subcomponents for the track geometry car. Moreover, MERMEC presented Buy America Certifications that it obtained from many of its component and subcomponent suppliers. These Buy America Certificates indicated that the domestic content percentage of the components and subcomponents to be supplied would exceed the 60 percent threshold. 49 CFR § 661.11.

To independently confirm pricing information, the contractor obtained quotes from three domestic component suppliers; the contractor found that these figures closely aligned with those on MERMEC's Total Material Pricing worksheets. The track geometry car's body will be manufactured in Italy at MERMEC's Italian-owned parent company.<sup>3</sup> MERMEC also correctly included the car's foreign costs in its Total Material Price worksheets. Ultimately, the FTA's contractor concluded that MERMEC provided sufficient information and documentation to support its Certification of Buy America Compliance at the pre-award stage. Buy America Pre-Award Desk Review at 9.

---

<sup>1</sup> See 49 CFR § 661.3 ("Rolling stock means transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services.").

<sup>2</sup> A copy of the November 18, 2015 Buy America Pre-Award Desk Review is enclosed.

<sup>3</sup> It should be noted that the steel used in the car body will be of U.S. origin.

assembly in Madison and other components will be assembled at domestic sub-supplier locations. During the contractor's site visit, a GRS manager confirmed that this final assembly plan will be followed in accordance with the Buy America final assembly requirement. 49 CFR § 661.11; *see* Buy America Pre-Award Desk Review at 6.

Because this is the first time that MERMEC is producing a track geometry car that is subject to the Buy America regulations, FTA recommends that BART conduct interim audits during the manufacturing process to ensure that the final vehicle delivered pursuant to the contract contains more than 60 percent domestic content and is assembled in the United States.

Pursuant to 49 C.F.R. § 661.15(o), a party involved in this matter may request FTA's reconsideration, based on matters of fact or points of law that were not known or available to the party during the investigation, within ten (10) business days after the date of this decision.

Thank you for your cooperation in this matter. If you have any questions or concerns, please do not hesitate to contact Laura Ames, by telephone at (202) 366-2743 or by electronic mail at [Laura.Ames@dot.gov](mailto:Laura.Ames@dot.gov).

Sincerely,



Ellen Partridge  
Acting Chief Counsel

Enclosure

cc (Via Electronic Mail):

Marco Gomez, BART  
Richard Wiczorek, BART  
Luca Ebreo, MERMEC  
Aaron P. Silberman, Esq., MERMEC  
David P. Macaluso, ENSCO  
Leslie Rogers, FTA



530 Walnut Street  
Philadelphia, PA 19106  
V. 215.922.8080  
F. 215.922.8082

**FEDERAL TRANSIT ADMINISTRATION**

**PROJECT MANAGEMENT OVERSIGHT PROGRAM**

**Buy America Pre-Award Desk Review**

**of**

**Bay Area Rapid Transit (BART)**

**Track Geometry Car**

**From MERMEC, Inc.**

**Final Report**

**November 18, 2015**

**Contract No.:** DTFT60-14-00017  
**Project No.:** DC-27-5283  
**Task Order No.:** 0001, Programmatic  
**CLIN No.:** 0001  
**SubCLIN No.:** 0001A  
**Work Order No.:** 13  
**OP's Referenced:** 1, 36

## I. EXECUTIVE SUMMARY

### A. Purpose

The Federal Transit Administration (FTA) has engaged the assistance of Urban Engineers, Inc. (Urban) to assist the FTA in a Buy America Pre-Award Desk Review, as further defined in this report.

This report has been developed in accordance with 49 CFR §661.15, “Investigation Procedures”, to summarize Urban’s independent review and evaluation of a vendor’s (MERMEC, Inc.) ability to comply with its affirmative “Certification of Compliance” with the requirements of both 49 USC §5323(j)(2)(C) and 49 CFR Part 661 that was submitted with their bid to the San Francisco Bay Area Rapid Transit (BART) on June 16, 2015, and in accordance with 49 CFR §661.12, “Certification Requirement for Procurement of Buses, Other Rolling Stock and Associated Equipment.” The following key regulatory and guidance documents were utilized during this review:

- 49 U.S.C., Chapter 53, Sub-paragraph 5323(j)
- 49 CFR Part 661, Buy America Requirements
- 49 CFR Part 663, Pre-Award and Post-Delivery Audits of Rolling Stock Purchases<sup>1</sup>
- Draft revision (update) of the FTA’s TPM-20, Office of Engineering, Oversight Procedure 36 (OP-36) for Buy America Compliance Reviews, dated September 2013
- FTA’s Buy America Handbooks – from the FTA website

More specifically, in response to a formal Petition submitted to the FTA on July 1, 2015, the FTA initiated an investigation pursuant to 49 C.F.R. §661.15 to determine whether BART’s procurement complies with the FTA’s Buy America requirements. More specifically, the investigation will evaluate whether or not the Track Geometry Car offered by MERMEC, Inc., in response to BART’s procurement 15TD-250 2015, meets the requirement that the cost of the vehicle components produced in the United States (US) is greater than sixty percent (60%) of the cost of all components of the vehicle. The referenced BART procurement is partially FTA-funded (FTA Project No. CA-54-0023).

### B. Background

MERMEC, Inc. was one of three bidders for BART’s procurement of a Track Geometry Car under an Advanced Notice to Bidders for Contract No. 15TD-250. The other two bidders were Plasser American Corporation and ENSCO Rail, Inc. (ENSCO). On June 17, 2015, BART’s staff issued a recommendation to its Board for authorization to award a contract to MERMEC, Inc. (see Exhibit A). On June 26, 2015, ENSCO received a notice from BART that its Board, via a

---

<sup>1</sup> The pre-award and post-delivery audit requirements in 49 C.F.R. part 663 for rolling stock do not apply to vehicles that are not used in revenue service.

meeting conducted in June 25, 2015, had authorized an award of the Track Geometry Car contract to MERMEC Inc., "...subject to the Districts and FTA's Protest Procedures..." (see Exhibit B). On July 1, 2015, ENSCO submitted a formal petition to the FTA's Office of Chief Counsel seeking an investigation into the compliance of the apparent successful bidder (MERMEC, Inc.) to the Buy America requirements in accordance with 49 C.F.R. § 661.15 (see Exhibit C).

On August 12, 2015, the FTA notified the Project Sponsor, BART, of its intent to engage in the investigation requested by ENSCO's petition (see Exhibit D). On August 27, 2015, BART notified the FTA that it authorized the FTA to contact MERMEC, Inc., directly, regarding the investigation. On September 30, 2015, the FTA engaged Urban to conduct a Buy America Pre-Award Desk Review and site visit of MERMEC, Inc. relative to its Track Geometry Car bid to BART procurement 15TD-250 2015.

Prior to the site visit to MERMEC's facilities in West Columbia, SC, several procurement files were shared with Urban (see Exhibits A to D). On October 14, 2015, the FTA's Office of Chief Counsel, forwarded a letter to MERMEC, Inc. confirming the date and intent of the site visit, as well as a list of requested documentation in support of the review (see Exhibit E). The site visit and desk review took place on October 27, 2015.

The Urban representative met with the MERMEC representatives on Tuesday, October 27, 2015, in their West Columbia, SC facility. A list of MERMEC representatives in attendance is provided in Section II.B. of this report. The MERMEC representatives were very cordial and prepared several packages on information and documentation for review. They also provided a brief tour of several job shops in their facility, where many of the testing components of a Track Geometry Car are assembled. Following a full day of review, Urban's representative asked MERMEC to provide additional information relating to some unanswered questions regarding issues where the reviewer determined additional documentation or support was necessary. The Urban representative memorialized the list of requested information in an e-mail correspondence to MERMEC on October 29, 2015. After several e-mail exchanges between Urban and MERMEC representatives to clarify the information request, MERMEC provided a detailed response, including additional information, submitted on November 4, 2015. Urban has evaluated all information and documentation presented by MERMEC during the site visit and follow-up correspondence in issuing this report and opinion.

## **C. Summary**

### **i. Findings**

As more fully described in Section II.A of this report, Urban's review provides a list of findings associated with the Buy America Pre-Award Desk Review of the MERMEC Track Geometry Car being offered to BART as part of the procurement 15TD-250 2015.

In its review of the MERMEC, Inc. bid and the associated supporting documentation, Urban determined that the information and documentation provided during the review is primarily under development or variable. Taking this into consideration, Urban has determined MERMEC's plan to comply with its Certification of Compliance with Buy America requirements, and more specifically its plan to deliver a Track Geometry Car to BART that exceeds the requirement for greater than 60% domestic-sourced materials (components and subcomponents), to be reasonable. Neither FTA regulation (49 C.F.R. Part 663) nor the BART procurement required a Pre-Award Buy America audit or review of the bidder's certifications; therefore, it is difficult to fault any bidder for not having a complete and completely verifiable list of sub-suppliers (components or subcomponents) that is supported with actual price quotes at the time of pre-award of the contract.

**ii. Recommendation**

The FTA should find that MERMEC's plan to honor its affirmative Buy America Certification for the BART Track Geometry Car is reasonable, more specifically, as it relates to the plan to meet the 49 USC §5323(j)(2)(C)(i) requirement for greater than 60% US based components and subcomponents.

Due to the fact that many documents and information provided by MERMEC, Inc. was supportive of previous manufacturing and car production orders, there needed to be a reliance on these historical records that may not be indicative of the actual components or subcomponents that MERMEC, Inc. will include in the Track Geometry Car being offered to BART under the referenced procurement.

## II. PRE-AWARD DESK REVIEW

### A. Review Process

Urban followed a process for evaluating MERMEC Inc.'s compliance with its affirmative Buy America certification with regard to the BART procurement for a Track Geometry Car as outlined in FTA's OP-36 (September 2013 Draft Update), referencing, as applicable, the other federal regulatory documents listed in Section I.A. of this report. In all cases, the review was predicated on an independent and objective evaluation of information and documentation provided to Urban by the FTA and MERMEC. In evaluating this information and having participated in a site visit to MERMEC's facility in West Columbia, SC, Urban issued a written request for additional information that was forwarded directly to MERMEC, with a copy of this request forwarded to FTA.

#### i. Pre-Award Buy America Review

Prior to visiting MERMEC's facilities, Urban reviewed the BART procurement documents and the petition that was filed with the FTA in response to the BART's Board recommendation for award of the Track Geometry Car contract to MERMEC. Included in these documents was a BART staff recommendation to its Board, dated June 17, 2015 (see Exhibit A), that included the results of the procurement and some supplemental Bid Schedules provided by MERMEC in response to the solicitation. Also included in this BART staff recommendation to its Board was a copy of the Buy America Certificate included within MERMEC's bid, signed by an executive, and dated June 15, 2015. The Bid Schedules referenced above (see Exhibit A), provided the total bid value of MERMEC as \$13,695,195.80, inclusive of a 9.5% Sales Tax provision. MERMEC's net bid, without Sales Tax, was \$12,450,178, which is further broken down in the staff summary to the BART Board, stating the unit price of the Track Geometry Car is \$10,878,320, without costs for items like training, spare parts, shipping & handling, and performance testing. Lastly, the staff summary to BART's Board provided another Schedule titled, "Designation of Subsuppliers and DBEs Form", wherein five first-tier sub-suppliers were listed, with a brief description of the components, materials, or services to be provided by these five firms, along with a price for each pool of work. The sum total of the prices offered by these five sub-suppliers was calculated to be \$4,120,000, with components, materials, or services from MERMEC S.p.A. making up \$1,600,000 of this amount. Urban believes this implied foreign ratio ( $\$1,600,000/\$4,120,000$ ) formed the basis for the petition lodged with the FTA.

Upon arriving at MERMEC's SC facility on October 27, 2015, Urban met with five individuals representing MERMEC's interests in the Pre-Award Buy America review; the names, titles, and organizations of these representatives are listed in Section II. B of this report. The President of

MERMEC, Inc. gave a brief presentation on the history of the MERMEC organization and presented two large binders of information that were prepared by MERMEC, Inc. in support of the Pre-Award Buy America review.

The first binder contained:

- Letters and records of correspondences exchanged between MERMEC, BART, and the FTA relating to the BART procurement and in establishing the premise for the FTA's Pre-Award Buy America review.
- A copy of a Non-Disclosure Agreement between MERMEC and Urban, recognizing that some of the information to be provided during the course of the review contained proprietary material.
- A List of the Documentation requested of MERMEC by the FTA prior to the site visit. This list was supplemented by a crosswalk of all requested items to supporting documentation that MERMEC had prepared and was prepared to present during the site visit.
- A list of US-based suppliers that were assumed/proposed to be used for providing components or subcomponents for MERMEC's offered Track Geometry Car to BART. This supplier list also provided a brief description of the "Scope of Supply" for each vendor, as well as points of contact, with company addresses.
- A large packet of Buy America Certificates provided to MERMEC by apparent suppliers for the BART Track Geometry Car that MERMEC had reached out to. These Buy America Certificates indicated the component or subcomponent suppliers would exceed the 60% domestic requirement, and therefore, were affirmatively asserting compliance with Buy America requirements.

The second binder contained:

- A copy of the original Buy America Certificate provided by MERMEC as part of its bid on the BART Track Geometry Car procurement.
- Pricing data, in support of MERMEC's bid to BART.
  - This pricing data was presented in a summary form titled, "Total Contract Price Breakdown," and included the Total Material Costs.
  - MERMEC asserted its "Total Material Costs" should be used as the basis for the Buy America compliance test of MERMEC's plan to provide greater than 60% US component and subcomponent content. A six-page worksheet was presented, titled "Buy America Domestic Content Worksheet for BART Track Geometry Car", which included a list of components and subcomponents with supplier names, country of origin, manufacturing location,

and pricing information that also indicated which costs should be considered US-based versus costs that would be considered foreign. In summary, MERMEC's worksheets assert that it will surpass the 60% domestic Buy America requirement. These worksheets formed the basis for most of Urban's review.

- The second binder also contained a significant amount of pricing data that was loosely aligned with the six-page worksheet of Component and Subcomponents (see below for more detail on this).

## ii. Findings

As mentioned above, Urban's review of MERMEC, Inc.'s affirmative Buy America Certificate related to the BART Track Geometry Car procurement focused on MERMEC, Inc.'s plan to meet or exceed the Buy America requirement for greater than 60% components and subcomponents (as calculated by cost) in the car that they are offering to manufacture and deliver to BART. A summary of our review and findings follows:

- All arithmetic calculations contained on the Total Contract Price sheet and the Total Material Costs worksheet (six-pages) were found to be accurate, including the percentage calculations of domestic vs. foreign prices.
- MERMEC disclosed that Final Assembly of the Track Geometry Car will occur in Madison, IL, at the facilities of Gateway Rail Services, Inc. (GRS). Urban was shown a plan (contained in the second binder) that stated that MERMEC has a verbal agreement in place with GRS that would allow for delivery of key components and some subcomponents to GRS's Madison, IL facilities. At GRS, some components will undergo final assembly, prior to being included in the overall final assembly of the Track Geometry Car; other components will be assembled at their domestic sub-supplier locations. To verify this plan, MERMEC asked an operational manager of GRS to attend Urban's site visit in West Columbia, SC. GRS's manager confirmed MERMEC's plan, indicating that although GRS had relatively limited experience in the final assembly of railcars, he stated that GRS would be able to comply with MERMEC's plan.
- Urban requested a written narrative for the makeup of the summary level pricing pools included in MERMEC's Total Contract Price sheet. In written response, MERMEC stated, "By definition, a Track Geometry Car is a self-propelled rail system measurement vehicle that is customized to satisfy each client's specific requirements and, except for rare cases, only one Track Geometry Car is procured and delivered. This is markedly different from a

passenger rail vehicle that is typically purchased in large quantities with much lower nonrecurring costs as a percentage of material cost. The majority of non-recurring costs are attributable to engineering design work associated with application and electromechanical engineering activities to meet BART's specific specification requirements. From the financial point of view, BART's RFP documents require a bid bond in the amount of 10% of the total value of the bid, a performance bond for 100% of the total value of the bid, and there will be no progress payments until acceptance of the track geometry car."

In addition, MERMEC provided some additional worksheets and cost makeup of each pool of costs that were included in the Total Contract Pricing sheet. Urban evaluated this additional information and found it to be generally reasonable, although additional testing could be warranted to ascertain validity.

- Most pricing included in the six-page worksheet was correlated to a relatively recent Track Recording Car order (delivered earlier this year) that the MERMEC Group had with Chile Railways Empresa de los Ferrocarriles del Estado (EFE). MERMEC, Inc. stated in a written response to Urban that "...a final design has not been decided at this pre-award stage; only limited suppliers were able to be contacted and MERMEC based its bid on the large-cost agreements with first-tier suppliers and previous projects costs and experience. This is typical for Track Geometry Car bids." Going further, MERMEC stated that its bid "...took into account the different standards requirements (included in the BART procurement is implied), the availability of suppliers that could/would provide quotes and Buy America certificates, and other factors that drive cost. MERMEC's cost estimate for the rolling stock at the bid phase was carried out based on the following criteria:
  - Starting points were the costs of the main basic components purchased for previous projects and for which historical data were available.
  - Increases to these basic costs took into account all the secondary elements necessary to integrate the components into the product. (For example, the basic cost for the floor is related to the cost of raw material itself and does not include the secondary items.)
  - Increases to component costs were made for the contingency due to the secondary items necessary to install them (e.g. anti-vibration supports, steel trays, etc.).
  - Increases to component costs were made for the contingency due to the (different) standards specifically required by the technical specifications (e.g. fire

- prevention, occupational health, requirements for friction, MIL standards, and other unique technical requirements).
- Increases to component costs were made for the contingency due to transport of materials to the final assembly location”.

Relative to these statements, Urban requested specific methodologies and price workups associated with eight randomly selected component systems included in MERMEC’s Total Material Pricing worksheets. MERMEC provided these details, but much of the information related to previous Purchase Orders from foreign suppliers, and Urban was unable to adequately trace or verify the pricing to the Total Material Pricing worksheets. Urban verified that the foreign exchange rate on the date of the BART bid, June 15, 2015 was, in fact 1 Euro to \$1.1256, as represented in many of MERMEC’s calculations.

- Urban was able to verify quotes from three US component suppliers that were closely aligned (some minor variations were seen, with MERMEC stating these are tied to costs of shipping; a reasonable claim) to MERMEC’s Total Material Pricing worksheets.
- Urban received additional data in support of the \$1,600,000 price from MERMEC S.p.A. included in MERMEC, Inc.’s bid and supporting schedules to BART. This \$1.6 million was composed of approximately \$800,000 in material costs, with the balance relating to engineering costs that are not part of the Buy America domestic ratio evaluation. MERMEC, Inc. clearly allocated the anticipated material costs from MERMEC S.p.A. to the foreign pool of costs in its domestic content ratio presented in the Total Material Pricing worksheets.
- Urban was able to verify that MERMEC had obtained affirmative Buy America Certifications from many of the component and subcomponent suppliers included on its Total Material Pricing worksheets. Although most of these firms were not asked to provide a price quote (per MERMEC), MERMEC asserts that their willingness to provide a Buy America Certificate to MERMEC is indicative of an intent to provide a price quote when, and if, asked by MERMEC.
- The Urban representative was given a visual tour of MERMEC, Inc.’s manufacturing “job shops” at its West Columbia, SC facility, where it was demonstrated that most of the testing equipment to be included in the Track Geometry Car for BART will likely come from this facility, although no physical examination of actual materials or supplies for country of origin was performed. This testing equipment (each are considered individual components) makes up approximately one-third of the Total Material Costs

included in MERMEC's pricing worksheets, and with the exception of one foreign component system, appears to be Buy America compliant.

- MERMEC confirmed that the Car Body Structure will come from its Italian-owned parent company, with the steel to come from US suppliers (but no tariff exemptions will be sought). The costs for the Car Body were correctly included as non-domestic (or foreign) in MERMEC's Total Material Price worksheets.
- Urban was able to reasonably verify that foreign shipping costs included with the delivery of the Car Body and some miscellaneous testing equipment parts (need for the testing components) were properly identified and calculated into MERMEC's worksheets that assert a ratio of domestic vs. foreign materials.
- Although Urban was unable to ascertain a specific ratio of US-based components and subcomponents, as a percentage of the overall material costs included in MERMEC's bid to BART, MERMEC provided a reasonable plan and enough documentation and information to support its Certification of Buy America compliance at Pre-Award.

## **B. Key Participants**

### **i. Federal Transit Administration (FTA)**

- Deirdre Baker, FTA Task Order Manager
- Patrick M. Centolanzi, FTA Work Order Manager
- Cecelia Comito, FTA Headquarters
- Laura Goldin, FTA Headquarters

### **ii. MERMEC, Inc. (MERMEC)**

- Luca Ebreo, President, MERMEC, Inc.
- Bill Cegelis, Operations Manager, MERMEC, Inc.
- Giuliano Laudisa, Senior Engineer, MERMEC S.p.A.
- Clyde Hentz, Operations Manager, Gateway Rail Services, Inc.
- Robin Hazy, Consultant to MERMEC, Raul Bravo & Associates, Inc.

### **iii. Urban Engineers, Inc.**

- John S. Holak, Risk Assessment Manager & Buy America Expert
- Al Scala, Task Order Manager
- Ronald Swerdon, Quality Assurance/Control Manager
- Bill Thomsen, Program Manager

### **III. Attachments**

- **Exhibit A – BART Staff Summary to its Board, June 17, 2015**
- **Exhibit B – BART Notification of Award to ENSCO, June 26, 2015**
- **Exhibit C – ENSCO Letter of Petition to FTA, July 1, 2015**
- **Exhibit D – FTA Letter to BART, re: Pre-Award Buy America Review, 8/12/15**
- **Exhibit E – FTA Letter to MERMEC Inc., re: Buy America Review, 10/14/15**

