



METROPOLITAN  
TRANSPORTATION  
COMMISSION

Agenda Item 5a

Joseph P. Bort MetroCenter  
101 Eighth Street  
Oakland, CA 94607-4700  
TEL 510.817.5700  
TDD/TTY 510.817.5769  
FAX 510.817.5848  
E-MAIL [info@mtc.ca.gov](mailto:info@mtc.ca.gov)  
WEB [www.mtc.ca.gov](http://www.mtc.ca.gov)

*Memorandum*

TO: Legislation Committee

DATE: May 4, 2007

FR: Executive Director

RE: H.R. 1984 (Baird) — Buy America

**Description**

H.R. 1984, authored by Congressman Baird (D-WA), would change how the “Buy America” law affects project contracts administered by the Federal Highway Administration (FHWA). Specifically, this bill would require that FHWA evaluate a project as a whole, rather than determining the applicability of “Buy America” by evaluating each specific contract within an overall project. For our region, the bill has the effect of singling out the construction of the East Span of the San Francisco-Oakland Bay Bridge with a ‘look back’ provision that would apply the new terms to past actions by FHWA, resulting in potential sanctions.

**Recommendation:** Oppose

**Discussion**

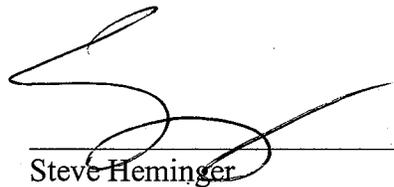
By way of background, the Bay Bridge project has 21 contracts. While some contracts to build the East Span replacement project contain federal funds, the Self-Anchored-Suspension (SAS) contract was determined by FHWA to be exempt from “Buy America” because no federal funds are used in that particular contract. We estimate that if “Buy America” were applied to the SAS segment, it could result in a cost increase of over \$400 million, as discussed below.

The “Buy America” law dates back to Franklin D. Roosevelt’s first term and was part of the federal government’s response to the Great Depression. In 1982, the provisions of “Buy America” were extended to transportation projects. In general terms, if a project falls under the jurisdiction of the “Buy America” requirements, then no federal funds may be used unless the materials, steel in this case, are manufactured in the U.S.A. The provisions of “Buy America” can be waived under certain circumstances, one of which is when the requirement raises the contract cost by more than 25 percent.

Recall that the initial sole bid for the SAS included both a ‘domestic’ and a ‘foreign’ bid. The foreign bid was considered acceptable because the domestic bid was \$405 million (or 29 percent) higher than the foreign bid. In the end, this was irrelevant as the bid was rejected for lack of a full funding plan.

Breaking large projects into smaller contracts is an important tool to increase bidding competition and to improve management control of the projects. A drawback of large projects is that the pool of contractors with sufficient financial resources to bid the work is reduced significantly. Also, smaller contracts provide opportunities for smaller local and regional construction firms to bid on work and can increase competition.

On April 24, 2007, the House Subcommittee on Highways and Transit held an informational hearing on H.R. 1984. Caltrans Chief Deputy Randall Iwasaki testified on the subject of the Bay Bridge, along with Robert H. Luffy, President and CEO of American Bridge Company — the firm that holds the construction contract to build the SAS. While we remain uncertain as to how exactly H.R. 1984 would be applied by FHWA with respect to the Bay Bridge, we recommend an oppose position on this bill.



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Steve Heminger