



BART's Experience So Far With Tariffs

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Tariff Effect on Transit Agency Operations & Projects

- Buses, railcars, ferries contain thousands of foreign made subcomponents even for Buy America compliant vehicles.
- Tariffs on steel, aluminum, and imported sub-assemblies may be passed through by manufacturers to transit agencies as higher unit prices, longer lead times, or both.
- Reduced domestic manufacturer competition (example: only 2 heavy-duty bus OEMs remain in the U.S., no railcar OEMs) limits agencies' ability to negotiate pricing relief.
- Zero-emission bus (ZEB) transition costs compounded — batteries, electric drive systems, and charging infrastructure rely heavily on imported materials.

Tariff Effect on Transit Agency Operations & Projects

- Many station construction, rail infrastructure, maintenance facilities, and bus rapid transit corridors depend on steel, aluminum, copper, and lumber — all subject to tariffs
- Contractor bids incorporate anticipated tariff costs, likely inflating project estimates above programmed amounts.

Tariff Effect on Transit Agency Operations & Projects

- Replacement parts, subcomponents, and consumables for existing fleet and infrastructure are subject to tariff surcharges.
- Sole-source and proprietary parts from foreign manufacturers face direct tariff cost increases with no competitive alternative.
- Price adjustment/escalation clauses become essential in new solicitations to manage tariff volatility

The Tariff Landscape

- **2018 - 2024**
 - Section 232 - Trade Expansion Act of 1962 (National Security) – steel, aluminum, broad tariffs applied to most countries
 - Section 301 - Trade Act of 1974 (Unfair Trade Practices — China) – machinery, electronics, semiconductors, plastics, chemicals, consumer goods, apparel, EVs, batteries, steel/aluminum, semiconductors, other strategic goods
- **2025 - 2026 Escalation**
 - Section 232 – Expanded. Copper, Heavy Duty Trucks, Buses, Lumber
 - Section 301 - Expanded
 - IEEPA – 10% baseline global tariff on virtually all imports

Impacts

- **Vehicle Procurements:** One bus manufacturer cited a 68% increase in costs since 2021 due to tariffs on steel, aluminum, and components passed onto transit agencies.
- **Construction & Capital:** 25-50% tariffs on imported steel, aluminum, copper, lumber, potentially raising costs for rail, facilities, and infrastructure projects.
 - Overall construction input prices are 2.8% higher; non-residential is 3.2% higher (Associated Builders and Contractors, Bureau of Labor Statistics)
- **Maintenance, Parts & Operations:** Higher unit costs and potentially extended lead times + sole source situations.

Issues with Tariff Claims

- Burden of proof is on Supplier to provide documented evidence of actual tariff costs incurred
 - Costs charged to a federal award must be adequately documented (2 CFR § 200.403)
 - “The party seeking the adjustment has the burden of proof in establishing the amount of the price adjustment,” and costs must demonstrate both causation and reasonableness of amount. FTA Best Practices Procurement Manual (2016) Section 5.2.8.
- Supplier already agreed to honor price quote based on agency purchase order terms and conditions
 - Unlikely to meet commercial impracticability standard under UCC § 2-615.
 - There must be contractual basis, cost reasonableness, for price adjustments. FTA Circular 4220.1G; 2 CFR Part 200.324.
- To what extent are these tariffs allowable costs (2 CFR § 200.403)?
- Budget Certainty — Agency has obligation to protect operational and capital financial planning

Learning Resources, Inc. v. Trump (Feb 2026)

- Relief from ‘Liberation Day’ Reciprocal Tariffs, Border Security Tariffs, Baseline Global Tariffs
- Tariffs Still in Effect: Steel & Aluminum/Copper/Vehicles, 2018-2019 China Tariffs, 15% Global Surcharge (2026)
- Refund Implications
 - Section 7(m), FTA Master Agreement (MA34): Obligation to return any amounts it owes the Federal Government for later refunds, corrections, or other similar actions.
 - 2 CFR § 200.406: Applicable credits—including refunds, rebates, and similar adjustments—must be credited to the federal award either as a cost reduction or a cash refund, as appropriate.
 - 2 CFR § 200.404: Costs must be necessary and reasonable for the performance of the federal award.
 - 2 CFR § 200.303: [Recipient must] maintain effective internal controls and take reasonable measures to safeguard federal funds.

Our Experience So Far

- New Car Procurement, Spare Parts, Aftermarket MRO Parts, Materials, Clothing
- Sole Source Purchases
- Tariff payments from foreign sources handled through Freight Brokerage Firm
- Capital Projects have been able to account for tariffs in project budgets

Our Experience So Far

Item	Country	2024 Unit Cost	2025 Unit Cost	% Change 24-25
High-Vis T-Shirt	China	\$ 39.05	\$ 42.15	8%
High-Vis Safety Vest	China	\$ 33.58	\$ 36.24	8%
Bolt-Stop	Domestic, But Raw Material Subject to Tariff	\$ 35.77	\$ 37.55	5%
Lower Guiding Roller Assembly	China	\$ 175.00	\$ 255.63	46%
Sliding Shaft	Germany	\$ 175.00	\$ 187.00	7%
Condenser & Motor Fan Assembly	Germany	\$ 449.37	\$ 471.84	5%
Oil Slinger Ring	China	\$ 48.94	\$ 99.56	103%

Example Cost Impact – Railcar Procurement

Amount	Tariff Month	Option invoiced	Month invoiced
\$ 710,276.90	March	Option 1	May-25
\$ 148,139.60	April	Option 1	Jun-25
\$ 212,108.05	May	Option 2	Aug-25
\$ 600,725.95	June	Option 2	Sep-25
\$ 424,213.85	July	Option 2	Oct-25
\$ 424,381.00	August	Option 2	Nov-25
\$ 25,257.00	August	Option 3	Nov-25
\$ 902,173.79	September	Option 3	Feb-26
\$ 926,944.83	October	Option 3	Feb-26
\$ 4,374,220.97			

Considerations

- Existing Contract Language
- Contingencies
- Scope Adjustments / Change Orders
- Amendments
- Allowances

Construction General Conditions

GC7.1 Laws To Be Observed. The Contractor shall keep fully informed concerning all governmental requirements, including but not limited to all State, federal, county and municipal laws, ordinances and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of the Work...***The District will not recognize any claim for additional compensation because of the need to comply with this provision and all applicable changes to State, Federal, county and municipal laws, ordinances and regulations.***

Construction General Conditions

GC8.6 Shortage of Materials. No extension of time will be granted for a delay caused by a shortage of materials (except District-furnished materials), unless the delay was unforeseeable to the Contractor or any Subcontractor and unless the shortage of materials was beyond the control or without the fault or negligence of the Contractor or any Subcontractor.

The Contractor shall furnish to the Engineer documentary proof that the Contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the Work and further proof in the form of critical-path-analysis data as required in Article GC8.4, that the inability to obtain such materials when originally planned, did in fact cause a delay in final completion of the entire Work which could not be compensated for by revising the sequence of the Contractor's operations.

Only the physical shortage of material will be considered under these provisions as a cause for extension of time and no consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost or price, unless it is shown to the satisfaction of the Engineer ***that such material could have been obtained only at exorbitant prices entirely out of line with current rates taking into account the quantities involved and the usual practices in obtaining such quantities.***

The term "shortage of materials," shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the Contract. Delays in obtaining materials due to priority in filling orders will not constitute a shortage of materials.

Increased Taxes and Tariffs

SC9.14.2 Increased Taxes and Tariffs.

Notwithstanding any provision in this Contract to the contrary, in the event the Supplier incurs additional and unexpected costs due to any change in Law enacted after December 1, 2018 concerning increased taxes or tariffs, the Supplier may submit a claim to the District in accordance with General Conditions Article P9.6 for the District's review. If approved by the District, the adjustment will be reflected in a Change Order to be executed between the District and the Supplier using the New Taxes and Tariffs Allowance described in Supplementary Conditions Article SC9.1, Paragraph I.

For claims regarding new, additional, or modified tariffs, the District will only recognize claims that arise due to tariffs imposed on subsystem supply of trucks, carbody, lighting, and communications.

FAR 52.229-3

- (c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

State of Hawaii Tariff Claims Process

Hawaii State Procurement Office - Procurement Circular No. 2025-05 (Apr. 30, 2025); issued to Hawaii procuring agencies, including Honolulu Authority for Rapid Transportation (HART).

- **Vendor claim:** Submit written request stating increase is directly attributable to tariffs, identify affected goods/services, and state the proposed price increase.
- **Required documentation:** Pre-/post-tariff invoices or POs; proof of tariff payment (e.g., customs declarations/receipts); cost breakdown linking tariff to final price; supplier letters; for services, documentation tying tariff-affected material costs to service price.
- **Agency review:** Check completeness and contract terms; perform cost analysis; do market research as needed; verify tariff applicability; assess whether requested increase is fair/reasonable; keep a written file of documents, analysis, and findings.
- **Decision:** Approve, deny, or partially approve in writing; do not pay increased prices for goods bought before tariff implementation; negotiate pass-through and expect vendor to absorb some costs; if price is not fair/reasonable and negotiations fail, consider termination for convenience.
- **Ongoing monitoring:** If tariffs are later reduced or removed, revisit pricing and ensure contract prices reflect any cost decreases.

Lessons Learned / Best Practices

- Audit contracts for tariff exposure and carefully prepare project budgets
- Consider formal tariff refund demand letters / gather tariff documentation
- Insert tariff adjustment clauses into new solicitations
- Consider structured tariff review process - tariff authority segregation and detailed documentation from vendors.
- Hold the line on fixed-price purchase order terms and conditions

- Section 122 Tariff expiration: July 24, 2026
- Section 232 Tariff investigations/expansion into other product categories
- Congressional tariff legislation under way

Questions?

