



File Code: 6300/1580

Date: October 16, 2009

Route To:

Subject: Process for Buy American Act Requirements under Section 1605 of the American Recovery and Reinvestment Act of 2009

To: Regional Foresters, Station Directors, Area Director, IITF Director and Deputy Chiefs

A project for government procurement, as it relates to the Buy American Act determination, is an award to a prime contractor. For grants and agreements, a project is defined as a grant (or other agreement) award to a recipient at any tier. The ARRA Buy American requirement applies to iron, steel, and manufactured goods acquired by contractors/grantees for use in ARRA funded public buildings and public works, essentially as construction materials. Contractors and grantees must use American made steel, iron, or manufactured goods for all awards under \$7,433,000 unless one of the three following exceptions exists:

1. The item/material is not produced in the U.S.
2. Use of American made goods will increase contract/grant cost by more than 25%.
3. Buying American would be "inconsistent with the public interest."

If the contract/grant total is under \$7,433,000 and meets one of the exceptions listed above, the following actions must be taken:

1. **Contracts:** The Contracting Officer shall submit a determination for one of the exceptions. The determination shall include market research, i.e., advertising in the Governmentwide point of entry (www.Fedbizopps.gov), that supports the request for the exception. In addition, the Contracting Officer shall list the excepted materials in the award.
2. The award official (Contracting Officer or Grants & Agreements Specialist) shall list the excepted materials in the award (use Buy American provision in the award to list excepted items).
3. The head of the agency shall publish a notice in the Federal Register within 2 weeks after the determination to use a foreign supplier.

For contracts and grants where the total award is above \$7,433,000 and the source country is listed in Section 1605 of the American Recovery and Reinvestment Act, the Buy American requirement is not applicable. If the source country is not listed, proceed with an exception request as described here.



ARRA References:

FAR Subpart 25.6 – American Recovery and Reinvestment Act – Buy American Act – Construction Materials

Federal Register – Vol. 74, No. 77 – April 23, 2009

Subpart B – Buy American Requirement under Section 1605 of the American Recovery and Reinvestment Act of 2009

2 CFR 176: Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards

When a request for an exception is made by the contractor/grantee for any one of the reasons stated above the following process shall be utilized:

- **Grants & Agreements:** The recipient shall submit a request for one of the exceptions. The request shall include market research that supports the request for the exception. In addition, the award official shall list the excepted materials in the applicable award provision of the award.

The EROC Lead for G&A shall submit the request to the Assistant Director for Recovery, WO AQM, for approval through the wo proc policy inbox.

- **Contracts:** The Contracting Officer shall submit a determination for one of the exceptions. The determination shall include market research, i.e., advertising in the Governmentwide point of entry (www.Fedbizopps.gov), that supports the request for the exception. In addition, the Contracting Officer shall list the excepted materials in the award.

The EROC Lead for Procurement shall submit the request to the Assistant Director for Recovery, WO AQM, for approval through the wo proc policy inbox.

The Director of AQM shall coordinate with the Chief's office to publish the notice in the Federal Register within two weeks after the determination is made. (Follow the directions in FAR Part 25.6 above or Federal Register, Vol 74, No 77, FAR Subpart 25.6, 2 CFR 176 for posting requirements.)

Please give this wide distribution to your program offices that interface with the EROCs.

/s/ Ronald E. Hooper

RONALD E. HOOPER

Director, Acquisition Management

cc: pdl wo ops aqm directors, pdl wo ops aqm Procurement Analystscc: pdl wo ops aqm directors