

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-5344-N-01]

**Notice of National Exceptions to
Section 1605 of the Recovery Act (Buy
American Requirement) Applicable to
Public and Indian Housing Recovery
Act Funds**

AGENCY: Office of the Assistant
Secretary for Public and Indian
Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the
American Recovery and Reinvestment
Act of 2009 (Pub. L. 111-05, approved
February 17, 2009) (Recovery Act), and
implementing guidance of the Office of
Management and Budget (OMB), this
notice advises that certain national
exceptions to the Buy American
requirement of the Recovery Act have
been determined applicable for work
using Capital Fund Recovery Formula
and Competition (CFRFC) grant funds.

FOR FURTHER INFORMATION CONTACT:
Dominique G. Blom, Deputy Assistant
Secretary for Public Housing
Investments, Office of Public Housing
Investments, Office of Public and Indian
Housing, Department of Housing and
Urban Development, 451 7th Street,
SW., Room 4210, Washington, DC
20410-4000, telephone 202-402-8500
(this is not a toll-free number). Persons
with hearing- or speech-impairments
may access this number through TTY by
calling the toll-free Federal Information
Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: The
Recovery Act awarded an additional
\$4,000,000,000 for the "Public Housing
Capital Fund." Section 1605(a) of the
Recovery Act, the "Buy American"
provision, states that for Recovery Act
funds used for a project for the
construction, alteration, maintenance, or
repair of a public building or public
work, all of the iron, steel, and
manufactured goods used in the project
must be produced in the United States.

Section 1605(b) of the Recovery Act
provides certain exceptions to the Buy
American requirement. Section 1605(b)
provides that the Buy American
requirement shall not apply in any case
or category in which the head of a
Federal department or agency finds that:
(1) Applying the Buy American
requirement would be inconsistent with
the public interest; (2) iron, steel, and
the relevant manufactured goods are not
produced in the U.S. in sufficient and
reasonably available quantities or of
satisfactory quality, or (3) inclusion of
iron, steel, and manufactured goods will

increase the cost of the overall project
by more than 25 percent. Section
1605(c) provides that if the head of a
Federal department or agency makes a
determination pursuant to section
1605(b), the head of the department or
agency shall publish a detailed written
justification in the **Federal Register**.

In accordance with section 1605(c) of
the Recovery Act and OMB's
implementing guidance published on
April 23, 2009 (74 FR 18449), this notice
advises the public that the Secretary has
determined that certain exceptions to
the Buy American requirement are
applicable to work using CFRFC grant
funds based on findings made under
section 1605(b). The exceptions
determined applicable, without the
necessity of a grantee to seek an
individual exception determination, are
as follows:

1. If another Federal agency (e.g.,
Department of Commerce, Department
of Energy or Environmental Protection
Agency) has determined that an
exception to the Buy American
requirement is applicable under section
1605(b), for a project including public
housing, HUD will accept that agency's
determination and permit the public
housing agency (PHA) (HUD program
grantee) to apply that exception for the
remainder of HUD-assisted work in that
project.

2. If another HUD Program Office
(e.g., Office of Community Planning and
Development) has determined that an
exception to the Buy American
requirement is applicable under section
1605(b) for a project, and an analysis
supports its application to another
request, HUD's Office of Public and
Indian Housing (PIH) may accept that
determination and permit the PHA to
apply that exception to the remainder of
the CFRFC grant work in that project.

3. Where the size of the CFRFC grant
is less than \$100,000 (currently the 24
CFR part 85 simplified acquisition
threshold), the Buy American
requirement is not applicable.

4. Where the size of a contract funded
with CFRFC grant assistance is less than
\$100,000, regardless of the size of the
PHA, the Buy American requirement is
not applicable.

5. For any project substantially under
contract or under way prior to
acceptance of CFRFC funds, the Buy
American requirement is not applicable.

In addition to these five national
exceptions, there is also an existing list
of nonavailable articles listed at 48 CFR
25.104(a) (FAR List). The procedures to
apply if any of those articles are
manufactured goods needed in the
project covered by the Buy American

requirement are found at 48 CFR
25.103(b)(1). See also 2 CFR 176.80.

Additional information about these
exceptions has been provided in the PIH
Buy American Implementation
Guidance, which can be found on
HUD's Web site at: [http://www.hud.gov/
offices/pih/publications/notices/](http://www.hud.gov/offices/pih/publications/notices/).

HUD's foremost expectation is that
PHAs will use American iron, steel, and
manufactured goods throughout their
Recovery Act assisted projects.
However, there are certain
circumstances under which exceptions
to the Buy American requirement will
be appropriate in accordance with
section 1605(b). The legislative history
and Congressional intent expressed in
the record for the Recovery Act make
clear that the priority of Congress is to
provide capital funding to projects as
quickly as possible to create jobs, assist
those most impacted by the recession
and stabilize state and local government
budgets. Further evidence of the
urgency and the overarching
Congressional directives in providing
this assistance for CFRFC programs are
the specific requirements that the
funding is for: (1) Priority investments;
(2) priority capital projects that can be
awarded contracts based on bids within
120 days from the date the funds are
made available to the PHAs (i.e., July
18, 2009, for Capital Fund Recovery
Formula (CFRF) grant funds); and (3)
PHA priority capital projects that are
already underway or included in the 5-
year capital fund plans required by the
section 5A of the United States Housing
Act of 1937 (1937 Act) (42 U.S.C.
1437c-1). The national exceptions to the
Buy American requirement determined
applicable to CFRFC grants funds are all
supportive and essential to carrying out
these Congressional mandates and
balanced with the interests and intent of
the Buy American requirement.

The Recovery Act has also imposed
obligation and expenditure of funds
requirements that are stricter than the
1937 Act requirements, which generally
provide PHAs two years to obligate
grant funds and four years to expend
those funds. Specifically, the Recovery
Act requires PHAs to obligate 100
percent of CFRF grant funds by March
17, 2010. All unobligated funds will be
unilaterally recaptured. PHAs must
expend at least 60 percent of the grant
by March 17, 2011, and if less than 60
percent is expended, all unexpended
funds will be unilaterally recaptured.
PHAs must expend 100 percent of the
grant by March 17, 2012, or all
unexpended funds will be unilaterally
recaptured. Extension of the obligation
and expenditure deadlines are not
permitted under the Recovery Act.

These strict obligation and expenditure requirements demonstrate the financial and construction expediency requirements that the PHAs must meet along with the additional requirement of Buy American and the need for transparency.

The five exception determinations listed above are based on a determination of inconsistency with public interest. The FAR List is based insufficient and not reasonably available quantities and of a satisfactory quality. At this time, HUD is not adding to the FAR List or creating a HUD list. HUD does not need to provide any additional justification for use of items currently on the FAR List of domestically nonavailable items at 48 CFR 25.104(a). If a PHA wants to use items on the FAR List or to have items added to the FAR List or to a HUD list, the PHA must follow the PIH Buy American Implementation Guidance.

The five national exceptions determined applicable are based on public interest are necessary to: (1) Avoid delay in completion and restoration of housing for low-income families and the achievement of the Recovery Act deadlines; (2) avoid delays in the start of construction and modernization of public housing that will jeopardize jobs; (3) avoid the possibility of additional funding gaps on termination of certain contracts and price differentials cause by procurement of goods and equipment; (4) avoid loss of funding for critical projects; and (5) address current and emerging situations presented by PHAs. The national exception for PHAs where the size of the CFRFC grant is less than \$100,000 will cover 30 percent of the PHAs (often referred to as "small PHAs") and will amount to a relatively small impact (approximately \$52 million of the nearly \$4 billion in grant awards). A determination was made that an exception is also applicable to PHAs where the size of a contract funded with CFRFC grant assistance is less than \$100,000 (which is currently the 24 CFR part 85 simplified acquisition threshold fixed at 41 U.S.C. 403(11)) in part because under 24 CFR 85.36(d)(1), these are small purchase procedures that are relatively simple and informal procurement methods for securing goods. If small purchase procedures are used by a PHA, price or rate quotations are to be obtained from at least three qualified sources.

PHAs have brought to HUD's attention that every public housing development and modernization project involves the use of literally thousands of miscellaneous, generally low-cost components that are essential for but

incidental to the construction and modernization, and are incorporated into the physical structure of the project, such as nails, hinges, other hardware, electrical, plumbing and finishing components. These incidental components are subject to the Buy American requirement, but unlike major components, the country of manufacture and the availability of alternatives are not readily or reasonably identifiable prior to procurement in the normal course of construction and modernization of public housing. Over 2,300 PHAs have less than 250 units in inventory, and many of these PHAs are located in rural areas or small towns. HUD understands that these PHAs in particular often have to search further in order to procure American-made items and find contractors familiar with the Buy American requirement. For these PHAs, it takes additional time to procure, and there are increased costs associated with bringing materials and contractors in from a great distance. Under the requirements of the Recovery Act, HUD is concerned that it could be disproportionate to the costs and time involved for the PHA or their contractor and would not be feasible for PHAs to find alternatives. In an effort to address this concern, HUD sought to identify the scope of these incidental components within the construction and modernization of public housing, consulted with PHAs and PHA trade associations and considered the number of ways and the number of sources of these components.

Recognition of the lack of availability and access to resources as well as relief from administrative burdens are critical to the success of small PHAs and consistent with Recovery Act objectives. As with any new requirement, implementation of the Buy American requirement will take analysis and resources that are not readily available to small PHAs. The need for the expeditious and efficient use of the CFRFC funds balanced with the long established recognition of decreased availability of resources available to small PHAs clearly supports exceptions 3 and 4 above.

Based on the information resulting from this process, the determination was made that these exceptions were appropriate because compliance with the Buy American requirement would be disproportionate to the cost and time involved for PHAs and delay work on critical public housing projects and the jobs associated with those projects. This public-interest justification does not reach the conclusion that the inclusion of iron, steel, and manufactured goods produced in the United States will

automatically increase the cost of the overall project by more than 25 percent. Cost is a factor in all PHA procurements and must be considered in accordance with 24 CFR part 85 and the cost principles at 2 CFR part 225. Cost is in part a factor in all of HUD's public interest national exceptions. HUD has decided that cost-based exceptions must be determined on a case-by-case basis and submitted to HUD for review under the PIH's Buy American Implementation Guidance.

For additional information see <http://www.hud.gov/offices/pih/publications/notices/>.

Dated: September 4, 2009.

Sandra B. Henriquez,
Assistant Secretary for Public and Indian Housing.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

Request for Comments on the Strategic Plan Framework as Input for Revision and Updating of the Departmental Strategic Plan

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: The Department of the Interior is seeking public comment as part of its process to revise and update its current strategic plan.

DATES: You must submit comments on or before November 10, 2009.

ADDRESSES: You may submit comments by any of the following methods:

E-mail:

StratPlancomments@ios.doi.gov.

FAX: 202-208-2619.

Mail: U.S. Department of the Interior, Office of the Secretary—Planning and Performance Management, Attention: DOI Strategic Planning Coordinator, 1849 C Street, NW., Mail Stop 5258, Washington, DC 20240-0001.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made public under certain circumstances. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.