

supporting jobs in the domestic manufacturing and construction industries. It is therefore in the public interest to issue a waiver of the Recovery Act Buy American provisions that allows this project to utilize Recovery Act award funds.

Under the authority of the Recovery Act, section 1605(b)(1), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provisions) if the application of section 1605 would be inconsistent with the public interest. On September 17, 2010, the Secretary of Energy re-delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy, for EERE Recovery Act projects.

In light of the foregoing, and under the authority of section 1605(b)(1) of Public Law 111-5 and the Re-delegation Order dated September 17, 2010, with respect to Recovery Act projects funded by EERE, on April 29, 2011 the Acting Assistant Secretary issued a "determination of inapplicability" (a waiver under the Recovery Act Buy American provisions) for the purchase of a GE Jenbacher JMC 320 gas reciprocating engine to be used in the Golden Triangle Regional Solid Waste Management Authority (GTR) landfill gas to energy project, sub award AR060-GT11-0111-0001 from the Mississippi State Energy Office, EECBG Award Recipient EE0000763.

**Authority:** Public Law 111-5, section 1605.

Issued in Washington, DC, on April 29, 2011.

**Henry Kelly,**

*Acting Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy.*

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

**ACTION:** Notice of limited waivers.

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605

of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, or the relevant manufactured goods are not produced in the United States at a reasonable cost), with respect to 300 Spanish Red Clay Tiles to be used on the Eagle Pass Library roof, a sub-grantee of the Texas State Energy Office, recipient of EECBG grant EE0000893.

**DATES:** Effective April 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287-1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE-2K, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** Under the authority of Recovery Act, Public Law 111-5, section 1605(b)(2), and its implementing requirements at 2 CFR 176.80(a)(2), the head of a Federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy American provision) if the cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25 percent. On September 17, 2010, the Secretary of Energy delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act. Pursuant to this delegation the Assistant Secretary, EERE, has concluded that Spanish Red Clay Tiles needed for the Eagle Pass Library Roofing project that are domestically manufactured will increase the cost of the overall project by more than 25 percent, and thus the 6300 Spanish Red Clay Tiles to be used in this project qualify for the "unreasonable cost" waiver determination.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability or unreasonable cost determinations.

The NIST MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to 'scout' for current or

potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver. Upon receipt of completed waiver requests for the product in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the NIST MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with labor unions, trade associations and other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for the Spanish Red Clay Tiles contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP's scouting efforts.

As a result of EERE's efforts and MEP's scouting process, quotes were obtained from four (4) domestic manufacturers to produce this item. Those quotes are reflected in the prices cited infra, and support the finding that this item, if purchased domestically, will increase the total project cost by more than 25%. This "unreasonable cost" waiver is for Spanish Red Clay Tiles to replace a 100-year-old Spanish Tile roof on the Eagle Pass Library in Eagle Pass Texas (at one time the Eagle Pass Post-Office). The original tile was produced in the city of Piedras Negras, Mexico. The tile is made of clay, and is still made today in the same manner as it was when the library was built 100 years ago.

The tile roof being installed on the Eagle Pass Library building will last 75 years, and be lighter in color than the current roof because of the deterioration and discoloration that has occurred to the existing roof tiles over time. Additionally, it will be installed in a manner to allow air to flow from eave to pinnacle, reflecting heat back into the atmosphere, rather than down into the building itself. Since the tiles are installed individually, rather than in sheets or in overlapping style, the natural airspace around the tiles creates natural ventilation that provides a thermal barrier for heat transfer to the roof deck. This can assist in the movement of the peak load demands by several hours.

Eagle Pass Library is designated as a Recorded Texas Historic Landmark

(RHTL) (under the name Eagle Pass Post Office). RHTLs are at least 50 years old and judged worthy of preservation for both architectural and historical significance. Buildings with this designation display an official Texas historical marker.

It is regulated that RHTLs retain their basic historical integrity and property owners are required to notify the Texas Historic Commission (THC) at least 60 days before beginning a project that will affect the exterior of a RHTL.

Notification includes a cover letter describing the scope of work, current overall photographs and close-up photographs of the areas requiring repair; drawings, specifications, and a proposal from a contractor may also be required. Staff responds within 30 days, either allowing work to proceed if it complies with the Standards for Rehabilitation or recommending other alternatives to consider.

Compliance with the Texas Secretary of the Interior's Standards for Rehabilitation (Texas Government Code, Chapter 442, Section 442.006(f)), requires that deteriorated or damaged historic building components be replaced in-kind, that is with matching materials. In the case of the Eagle Pass Post Office/Library, the clay tile roof is a character-defining feature and replacement with matching clay tile is the only material that complies with the Standards. As a result of these Standards the tile on the roof of the Eagle Pass Library must be replaced with like tile. This tile is available from Piedras Negras, Mexico for \$1.31 per piece, and the project requires 6300 tiles. The prices quoted from domestic manufacturers who could produce the equivalent red clay tiles; in part because they would have to produce molds from scratch for the tiles, and would have to ship substantially greater distances; were between \$18 and \$24 per tile. All of the prices listed above are per tile and are the total cost including shipping and development of the mold where applicable.

The roof replacement was bid out separately from other projects which include Recovery Act funds, and is the only work being done on this public building. Therefore, it fits the definition of a "project" and the total cost of the roof replacement is equal to the total project cost.

2 CFR 176.110, titled "Evaluating proposals of foreign iron, steel, and/or manufactured goods", states that if "the award official receives a request for an exception based on the cost of certain domestic iron, steel, and/or manufactured goods being unreasonable, in accordance with

§ 176.80, then the award official shall apply evaluation factors to the proposal to use such foreign iron, steel, and/or manufactured goods" Per that section, the total evaluated cost = project cost estimate + (.25 × project cost estimate).

The total cost of the project with the tiles from Piedras Negras is \$71,040. The total evaluated cost is \$71,400 + (.25 × \$71,400) or \$92,625.

The minimum cost for the project with US tiles is \$176,187, a cost increase of 148%. Thus, the Spanish Red Clay Tiles needed for this project that are domestically manufactured will increase the cost of the overall project by more than 25 percent.

Having established a proper justification based on unreasonable cost, EERE hereby provides notice that on April 15, 2011, a project-specific waiver of section 1605 of the Recovery Act was issued as detailed *supra*. This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Acting Assistant Secretary for EERE with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies only to EERE projects carried out under the Recovery Act; and only to this project specifically, waiver requests, even for the same or similar items, will be handled individually, because individual factors apply to each project.

**Authority:** Pub. L. 111-5, section 1605.

Issued in Washington, DC, on April 15, 2011.

**Henry Kelly,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.*

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

**ACTION:** Notice of Limited Waivers.

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy

American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality), with respect to: (1) 400 to 750 watt micro hydro-turbines meeting the specifications detailed below; (2) Oil fired direct vent space heaters for use in buildings that do not have ducts or piping for boiler heating systems; (3) ENERGY STAR rated electric heat pump water heaters and ENERGY STAR rated through-the-wall air conditioners; (4) Grid tied solar inverters of 800W or less, for applications where the panels generate 139VDC or less (not including micro-inverters); (5) 50 hp TEFC inverter duty motors for use in an existing Marley cooling tower; (6) Geothermal heat pumps for demonstration scale waste heat geothermal systems that allow the direct use of untreated wastewater to heat and cool commercial buildings; (7) Point to point/multi-point electronic broadband microwave radio systems with alignment tone and IE browser interface; (8) LED luminaires for roadway illumination with customized filter application to meet specific lighting requirements of Mauna Kea observatory; (9) Compressed Natural Gas (CNG) compressors, able to provide 3600 psi (248 bar) temperature compensated CNG supply to fast fill storage and fueling dispensers, efficient and adaptable to a small fleet (approximately 5 vehicles), as well as the wireless remote shut down controls (transmitters and receivers) for those CNG systems; (10) 8000W solar inverters for use with U.S. manufactured 315W panels; (11) Electronically commutated motor (ECM) type inline pumps; and (12) Inverters that permit optimal output of four (4) or more types of modules per array connected to inverter that will be used on eligible EERE-Recovery Act funded projects.

**DATES:** Effective April 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287-1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE-2K, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Recovery Act, Public Law 111-5, section 1605(b)(2), the head of a federal department or agency may issue a "determination of inapplicability" (a waiver of the Buy