

Number of Total Responses: 200; (7) *Annual Estimated Number of Burden Hours:* 200; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0.

Statutory Authority: Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act; Pub. L. 111–5).

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

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Limited Public Interest Waiver 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 Waiver.

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(1) (public interest waiver), with respect to section 1605 of the Recovery Act of 2009 (the Buy American provision) for the Golden Triangle Regional Solid Waste Management Authority (GTR) landfill gas to energy project, funded in part under a sub-award (AR060–GT11–0111–0001) from the Mississippi State Energy Office, recipient of EECBG Award EE0000763.

DATES: Effective April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Benjamin Goldstein, Recovery Act Buy American Coordinator, Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, buyamerican@ee.doe.gov, Department of Energy, 1000 Independence Avenue SW., Mailstop EE–2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION: This waiver applies only to this project for the purchase of a GE Jenbacher JMC 320 gas reciprocating engine manufactured in Austria.

Section 1605 of the American Recovery and Reinvestment Act of 2009, (Pub. L. 111–5), prohibits use of recovery funds for a project for the

construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. This prohibition applies when any part of the project is paid for with Recovery Act funds.

The landfill gas to energy project is funded, in part, by sub-award AR060–GT11–0111–0001 in the amount of \$310,000.00 from the Mississippi State Energy Office, recipient of EECBG Award EE0000763. Because this grant funds a portion of the project cost, all manufactured goods used in the project are subject to the Buy American Provisions—even if separate (non-federal) funds are used to purchase those items.

Specifically, this public interest determination waives the Buy American requirements for the Austrian made GE Jenbacher JMC 320 gas reciprocating engine being used in the landfill gas to energy project of the Golden Triangle Regional Solid Waste Management Authority (GTR). GTR had already entered into an agreement to purchase this item with non-federal funds before ARRA funds became available. And although ARRA funds will now be used in the project as a whole (the project has a total cost of approximately \$2 million dollars), those funds will not be used to purchase the GE Jenbacher JMC 320 gas reciprocating engine or any other foreign goods.

The GE Jenbacher JMC 320 gas reciprocating engine is only one manufactured good being used in the GTR landfill gas to energy project. This project also includes an American manufactured treatment skid, valued at approximately \$470,000 dollars and the overall construction of the facility, valued at approximately \$700,000. All manufactured goods, iron and steel that will be used in the project, with the exception of the GE Jenbacher JMC 320 gas reciprocating engine, will remain subject to the Buy American Provisions of the Recovery Act. No ARRA funds will be used towards the purchase of the GE Jenbacher JMC 320 gas reciprocating engine.

In September of 2010, GTR entered into a Generation Partners Agreement (GPA) with the Tennessee Valley Authority (TVA) for a landfill gas to energy project. Generation Partners is a TVA renewable energy initiative that provides technical support and incentives for the installation of renewable generation facilities. This GPA pays GTR the retail price of local electricity plus \$0.03 per kilowatt-hour for renewable energy. This GPA was awarded as part of GTR's application

under the TVA Green Power Partners Program. This GPA is extremely aggressive for this region of the United States, where renewable energy projects are generally negotiated at avoided cost levels. As part of the TVA Green Power Partners Program GPA contract, GTR is required to have the renewable energy system operational within 12 months of the signed GPA.

In October of 2010, pursuant to the GPA with TVA, GTR selected and contracted with Nixon Energy in to purchase a GE Jenbacher JMC 320 gas reciprocating engine for approximately \$870,000. The contract language signed between GTR and Nixon Energy states that cancellation of the contract would require GTR to pay the entire price of the contract to Nixon Energy.

In December of 2010, the GTR landfill gas to energy project was targeted by the Mississippi Department of Environmental Quality and Mississippi Development Authority (MDA) as a potential project to fund with ARRA funds awarded under EERE EECBG Award EE0000763. On January 12th, 2011 a meeting was held, and the MDA determined that the GTR landfill gas to energy project was an appropriate use of award funds.

On January 28, 2011 the award recipient applied for a public interest waiver, to allow the use of the Austrian manufactured GE Jenbacher JMC 320 gas reciprocating engine.

EERE recognizes that there are US manufacturers of generator sets. Had GTR been identified as a potential grant recipient earlier in the procurement process, EERE would have worked with GTR to find a US manufactured generator set that met their needs. In a case where a grantee cannot identify a domestically manufactured good, EERE utilizes its internal experts and its MOU with NIST–MEP to communicate with potential manufacturers and facilitate discussions between grantees and domestic producers.

EERE believes the public interest is best served by supporting projects that create or support jobs in the domestic manufacturing and construction industries while supporting a renewable energy infrastructure. The GTR landfill gas to energy project, with a total value of over \$2 million dollars, furthers both of these goals. Because no ARRA funds will be used towards the purchase of the GE Jenbacher JMC 320 gas reciprocating engine, all ARRA funds in the project (\$310,000) will be used in a manner consistent with the purposes of the Buy American provisions. In addition, another \$860,000 in non-Recovery Act dollars will also be subject to the Buy American provisions, creating and

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