



# CITY OF TAMPA

Pam Iorio, Mayor

CONTRACT ADMINISTRATION DEPARTMENT

David L. Vaughn, AIA, Director

## ADDENDUM NO. 1

**DATE: April 15, 2010**

Contract 10-C-00034; ARRA CDBG-R Green Building Upgrades to Community Facilities – Reroofing Upgrades at Wayne C. Papy Athletic Center

Bidders on the above referenced project are hereby notified that the following addendum is made to the Contract Documents. BIDS TO BE SUBMITTED SHALL CONFORM TO THIS NOTICE.

- Item 1: Bidders wishing to access the roof at the Wayne C. Papy Center shall provide their own access from the exterior only. Bidders must clearly identify themselves with site managers and specifically inform the managers of their intentions of accessing the roof, and identify the specific areas they intend to inspect.
- Item 2: Add to Instructions to Bidders subsection I-1.15, after section 1605, the attached EERE documents entitled EERE Nationwide Public Interest Waiver and the EERE Buy American Supply Item Clarification.

This addendum shall be included in and attached to the inside cover of the Contract Documents by and upon which bids are submitted.

All other provisions of the Contract Documents and Specifications not in conflict with this Addendum shall remain in full force and effect. Questions are to be e-mailed to Contract Administration@tampagov.net.

*Jim Greiner*

Jim Greiner, P.E., Contract Manager

**6450-01-P**

**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**Nationwide Limited Public Interest 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).

**NOTICE:** Buy American Exception under the American Recovery and Reinvestment Act of 2009

**SUMMARY:** The Office of Energy Efficiency and Renewable Energy (EERE) of the U.S. Department of Energy hereby provides notice that on March 19, 2010, the Assistant Secretary for EERE granted nationwide limited waivers of the Buy American requirements of the American Recovery and Reinvestment Act of 2009 (Recovery Act; Pub. L. 111-5) under the authority of section 1605(b)(1) [application of the restrictions of section 1605 would be inconsistent with the public interest] for the purchase of light-emitting diode LED lighting (lamps, fixtures, and any supporting components) and heating, ventilation and air conditioning (HVAC) units. These nationwide limited waivers apply to projects using EERE Recovery Act funds for the construction, alteration, maintenance and repair of a public building or public work. These limited waivers only apply in circumstances where the recipient of EERE Recovery Act funds (“grantee”) has taken substantial steps to commit funds for the purchase of LED lights or HVAC units between February 17, 2009 and March 31, 2010. Substantial steps to commit funds would include, but are not limited to, (1) issuing a Request for Proposals

(RFP) on or before March 31, 2010 (applicable only where the grantee accepts a proposal received under that RFP); (2) in the case of a sole source selection: placing an order for the goods on or before March 31, 2010; (3) commencing a bidding process on or before March 31, 2010; (4) in circumstances where the grantee solicited quotes without an RFP: the grantee purchases the goods based on a quote dated on or before March 31, 2010 and the order for the goods is placed on or before March 31, 2010; and (5) grantee has executed a contract or purchase agreement with a supplier to acquire affected goods between February 17, 2009 and March 31, 2010.

On March 31, 2010, these limited waivers of Buy American provisions will expire, with the exception of LED traffic lights, arrows, and crosswalk signals, which are covered by a nationwide categorical waiver based on domestic nonavailability issued on February 11, 2010. After March 31, 2010, EERE grantees are required to procure LED lighting and HVAC units from domestic manufacturers in accordance with the Recovery Act Buy American provisions.

**DATES:** Effective Date: March 19, 2010.

**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:** Section 1605 of the Recovery Act prohibits the use of recovery funds 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, or unless a waiver is granted by the head of the Federal department or agency. A waiver may be granted if the head of the Federal department or agency determines that one of three listed exceptions applies: (1) the application of Section 1605 requirements would be inconsistent with the public interest; (2) the iron, steel, or relevant manufactured good is not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25 percent.

In accordance with section 1605(c) of the Recovery Act and Section 176.80 of Title 2 of the Code of Federal Regulations, DOE hereby provides notice that, pursuant to a delegation of authority by the Secretary of Energy, dated November 10, 2009, the Assistant Secretary, EERE, has granted limited nationwide waivers of the requirements of Section 1605 of the Recovery Act for LED lighting (lamps, fixtures, and any supporting components) and heating, ventilation and air conditioning (HVAC) units in circumstances where the recipient of EERE Recovery Act funds (“grantee”) has taken substantial steps to commit funds for the purchase of LED lights or HVAC units between February 17, 2009 and March 31, 2010. Under the authority of section 1605(b)(1) of the Recovery Act, the Assistant Secretary, EERE, has determined that the application of section 1605 requirements in these circumstances would be inconsistent with the public

interest.

The limited waivers for these two categories of manufactured goods are intended to resolve the confusion surrounding the characterization of LED lights and HVAC units as “supply” items, and thus not subject to the Recovery Act Buy American provisions. The concept of the “supply” item has its origins in the Buy American Act (41 U.S.C. 10a - 10d) and the Federal Acquisition Regulation (FAR), neither of which applies to section 1605 of the Recovery Act. The concept of a “supply” item has no significance in the context of section 1605 (the Buy American provisions) of the Recovery Act. The Buy American provisions apply to all iron, steel, and manufactured goods used for a project funded by Recovery Act appropriations for the construction, alteration, maintenance, or repair of a public building or public work. However, there is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States (2 CFR 176.70).

However, it is understandable that a general lack of familiarity with the Buy American provisions would lead Recovery Act stakeholders to reference a similar set of procurement regulations—such as those codified by the FAR and Buy American Act—for guidance in understanding and interpreting section 1605 of the Recovery Act. This confusion ultimately led some recipients of EERE Recovery Act funds to rely on the “supply” item characterization to procure some LED lighting products and HVAC units from foreign manufacturers, without first seeking and obtaining an official waiver of section 1605 of the Recovery Act.

The purpose of the Recovery Act Buy American provisions is to support economic recovery by driving investment into the domestic manufacturing sector and recycling Recovery Act dollars within the U.S. economy. Given that the majority of Recovery Act-related procurement for EERE-funded projects has yet to occur, the Buy American provisions still have ample opportunity to fulfill their purpose and potential. This nationwide limited waiver being issued for LED lighting and HVAC units is critical to resolving the existing confusion, clearly elucidating the requirements of section 1605 of the Recovery Act, and moving forward in a proactive manner.

To support this potential, facilitate the implementation of section 1605 of the Recovery Act, and ensure that Recovery Act funds are deployed expeditiously, EERE is operationalizing a robust and proactive strategy to locate domestic manufacturers for the hard-to-find products sought by grantees. This strategy is outlined in a Request for Information published in Federal Register Vol. 75, No. 23 on Thursday, February 4 (and posted on the EERE Buy American webpage [http://www1.eere.energy.gov/recovery/buy\\_american\\_provision.html](http://www1.eere.energy.gov/recovery/buy_american_provision.html)), and demonstrates EERE's commitment to the fulfillment of the economic and job-creation potential of the Recovery Act Buy American provisions.

Finally, the installation of LED lights and more efficient HVAC units is a proven strategy to achieve impressive energy savings, reduce energy expenditures, and to create immediate jobs in the building, construction, and electrical trades. All three of these

attributes can support near-term economic recovery and long-term sustainability in locations across the country. Hence, the installation of these products has inherently supported the goals of the Recovery Act and—as a popular use of Recovery Act funds by EERE grantees—will continue to do so in the unambiguous regulatory landscape made possible by this nationwide limited waiver.

This SUPPLEMENTARY INFORMATION 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 Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of her responsibility. Consequently, this waiver applies to EERE projects carried out under the Recovery Act.

Authority: Pub.L. 111–5, section 1605.



Cathy Zoi  
Assistant Secretary for Energy Efficiency and Renewable Energy  
U.S. Department of Energy

Dated: March 19, 2010



**Department of Energy**  
Washington, DC 20585

In late April and early May, 2009, a series of the Department of Energy (DOE) responses posted on the Energy Efficiency and Conservation Block Grant (EECBG) formula Funding Opportunity Announcement (FOA) FedConnect Q&A database interpreted three categories of manufactured goods (fluorescent lighting ballasts, light-emitting diode (LED) lighting, and Heating, Ventilation and Air Conditioning (HVAC) units) to be “supply items,” and thus not subject to the Buy American provisions. DOE has subsequently concluded that the use of the “supply item” analysis is not determinative of whether or not the Recovery Act Buy American provisions apply.

The concept of the “supply item” has its origins in the Buy American Act (41 U.S.C. 10a - 10d) and the Federal Acquisition Regulation (FAR), neither of which pertain to section 1605 (the Buy American provisions) of the American Recovery and Reinvestment Act of 2009 (Recovery Act; Pub. L. 111-5). Consequently, the notion of a “supply item” has no relevance in the context of section 1605 of the Recovery Act. The Buy American provisions apply to all iron, steel, and manufactured goods used for a project funded by Recovery Act appropriations for the construction, alteration, maintenance, or repair of a public building or public work. There is no requirement with regard to the origin of components or subcomponents in manufactured goods, as long as the manufacturing occurs in the United States (2 CFR 176.70).

To clarify the Buy American regulatory landscape and resolve the confusion surrounding the “supply item” interpretation, the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE) of the U.S. Department of Energy on March 19, 2010, granted a nationwide limited waiver of the Buy American requirements of the Recovery Act under the authority of section 1605(b)(1) [application of the restrictions of section 1605 would be inconsistent with the public interest] for the purchase of LED lighting (lamps, fixtures, and any supporting components) and HVAC units. This nationwide limited waiver applies to projects using EERE Recovery Act funds for the construction, alteration, maintenance and repair of a public building or public work. This limited waiver *only applies* in circumstances where the recipient of EERE Recovery Act funds (“grantee”) has taken substantial steps to commit funds for the purchase of LED lights or HVAC units between February 17, 2009, and March 31, 2010. Substantial steps to commit funds would include, but are not limited to, (1) issuing a Request for Proposals (RFP) on or before March 31, 2010 (applicable only where the grantee accepts a proposal received under that RFP); (2) in the case of a sole source selection: placing an order for the goods on or before March 31, 2010; (3) commencing a bidding process on or before March 31, 2010; (4) in circumstances where the grantee solicited quotes without an RFP: the grantee purchases the goods based on a quote dated on or before March 31, 2010 and the order for the goods is placed on or before March 31, 2010; and (5) grantee has executed a contract or purchase agreement with a supplier to acquire affected goods between February 17, 2009, and March 31, 2010.

On March 31, 2010, this nationwide limited waiver of the Recovery Act Buy American provisions will expire. After March 31, 2010, EERE grantees are required to procure LED lighting and HVAC units from domestic manufacturers in accordance with the Recovery Act Buy American provisions (with the exception of LED traffic lights, arrows, and crosswalk signals, which are covered by a nationwide categorical waiver based on domestic nonavailability issued on February 11, 2010).

On February 11, 2010, the Assistant Secretary of Energy for Energy Efficiency and Renewable Energy issued a nationwide categorical waiver of the Buy American requirements of Recovery Act section 1605 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] for the purchase of fluorescent electronic lighting ballasts (with the exception of electronic dimming ballasts for fluorescent lamps that are capable of operating the lamps below 50 percent of their rated light output), and screw-base and pin-base compact fluorescent lamps (with the exception of plug-in CFLs longer than 10 inches). The nationwide categorical waiver for these products, along with the LED traffic lights, arrows, and crosswalk signals mentioned above, is independent from the limited public interest waiver for LED lighting and HVAC units, and does not expire on March 31, 2010.

The purpose of the Recovery Act Buy American provisions is to support economic recovery by driving investment into the domestic manufacturing sector and recycling

Recovery Act dollars within the U.S. economy. Given that the majority of Recovery Act-related procurement for EERE-funded projects has yet to occur, the Buy American provisions still have ample opportunity to fulfill their purpose and potential. The nationwide limited public interest waiver being issued for LED lighting and HVAC units is critical to resolving the confusion surrounding the “supply” analysis, clearly elucidating the requirements of section 1605 of the Recovery Act, and moving forward in a proactive manner.

Any additional questions regarding the Recovery Act Buy American provisions should be directed to the project officer for the relevant grant, and to the EERE Buy American coordinator at [buyamerican@ee.doe.gov](mailto:buyamerican@ee.doe.gov).