

American Recovery and Reinvestment Act (ARRA) Guidance for ARRA Funding Recipients of the California Energy Commission

Buy American Provisions of ARRA -- Documenting Compliance, Assessing the Validity of Certification Letters, and Other Resources

As stated in the terms and conditions of your American Recovery and Reinvestment Act of 2009 (ARRA) award agreement, all ARRA funding Recipients are required to comply with the Buy American provisions of ARRA (Section 1605 of Title XVI). The Buy American provisions of ARRA require that all iron, steel and manufactured goods used in projects funded by ARRA for the construction, alteration, maintenance or repair of a public building or public work must be produced in the United States unless one of three listed exceptions applies – nonavailability, unreasonable cost, or inconsistent with the public interest – and a waiver is granted by the United States Department of Energy (DOE). The Buy American provisions of ARRA are implemented by guidance issued by the Office of Management and Budget (OMB) found at 2 Code of Federal Regulations, Part 176, Subpart B.

Recipients are responsible for retaining documentation that demonstrates their compliance with the Buy American provisions of ARRA. During post-award monitoring activities, which may include desk reviews, on-site reviews, audits, and other activities, recipients may be asked to produce records that verify compliance. The Office of Energy Efficiency and Renewable Energy (EERE) at DOE has issued guidance on documenting compliance with the Buy American provisions of ARRA. This guidance may be found on EERE's Buy American web page at http://www1.eere.energy.gov/recovery/buy_american_provision.html.¹

This guidance identifies several types of documentation that may be used to demonstrate compliance with the Buy American provisions of ARRA, such as a certification letter from a contractor, vendor, distributor, supplier, or manufacturer that verifies a product was manufactured domestically. These certification letters should expressly state that the product in question complies with the Buy American provisions of ARRA. Letters that fail to include such an express certification and/or include references to the "Buy American Act," "component content," "supply item," or the Federal Acquisition Regulations (FAR), often signify a problem. Further, unless the project at issue has an estimated value of \$7,804,000² or more, certification letters that

¹ EERE's Buy American web page also provides guidance that identifies criteria for determining whether manufactured goods may be considered "produced in the United States" under the Buy American provisions of ARRA, FAQs, and a webinar by DOE's Buy American Coordinator, Benjamin Goldstein.

² 2. C.F.R. § 176.90(a) (stating that as of January 1, 2010, "[t]he Buy American requirement set out in § 176.70 shall not be applied where the iron, steel, or manufactured goods used in the project are from a Party to an international agreement, listed in paragraph (b) of [Section 176.90] and the recipient is required under an

reference the North American Free Trade Agreement (NAFTA) or other international agreements are likely invalid. For questions about the validity of certification letters and all other questions concerning the Buy American provisions of ARRA, please contact buyamerican@ee.doe.gov.

international agreement, described in an appendix to this subpart, to treat the goods and services of that Party the same as domestic goods and services.”).

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