



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



**AUG 13 2009**

## **Department of the Interior Guidance Release ARRA-2009-03**

**Subject:** **AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009:  
BUY AMERICAN ACT WAIVER GUIDANCE FOR FINANCIAL  
ASSISTANCE APPLICATIONS**

**References:** Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 (ARRA), dated April 3, 2009, P.L. 93-638, Indian Self-Determination Contracting Implementation Requirements for Financial Assistance; and ARRA Buy American Act requirements (2 CFR 176 Subpart B)

**1. Purpose:** Section 1605 of the ARRA, *Use of American Iron, Steel, and Manufactured Goods*, requires a specific application of Buy American Act requirements to ARRA-funded projects. It requires that, “none of the funds appropriated or otherwise made available by this Act may be used 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.” Section 1605 of the ARRA provides for the waiver of the Buy American Act requirements under three circumstances:

- Non-availability;
- Unreasonable cost; and
- Where the use of domestic iron, steel and manufactured goods is inconsistent with the public interest.

This policy sets forth the waiver request and approval requirements for the Department of the Interior.

**2. Effective Date:** Effective immediately upon issuance.

**3. Expiration Date:** The policy guidance will remain effect until cancelled or superseded.

#### 4. Actions Required for Recovery Act Compliance:

The Grants Officer or Contracting Officer must:

- Insert applicable Buy American Act requirements, 2 CFR 176 Subpart B section(s) as prescribed in all grants and cooperative agreement program announcements awarded on or after March 31, 2009, using ARRA-appropriated funds for construction projects as follows:
  - 176.60 Statutory Requirement.
  - 176.70 Policy.
  - 176.80 Exceptions.
  - 176.90 Non-application to acquisitions covered under international agreements.
  - 176.100 Timely determination concerning the inapplicability of Section 1605 of ARRA.
  - 176.110 Evaluating proposals of foreign iron, steel, and/or manufactured goods.
  - 176.120 Determinations made on late requests.
  - 176.130 Noncompliance.
  - 176.140 Award term - Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of ARRA.
  - 176.150 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of ARRA.
  - 176.160 Award term - Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of ARRA.
- The prescribed award term language of either 2 CFR Parts 176.140 or 176.160 must be placed in the award agreements. Part 176.160 is only applicable to international agreements.
- Modify existing agreements for financial assistance programs receiving ARRA funds. The recipient must accept the modification of an existing award in order to receive or use ARRA funds.
- Evaluate applications at the pre-award stage of the financial assistance business process to determine if an exception (2 CFR §176.80 ) applies which would allow the recipient to use foreign iron, steel, or manufactured goods in the award without regard the policy restrictions of Section 1605 of ARRA. The Grants Office or Contracts Officer must apply evaluation factors to determine the following:
  - (1) **Non-availability.** The iron, steel or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of non-availability of the articles listed at 48 CFR 25.104(a) and the procedures at

48 CFR 25.103(b)(1) also apply if any of those articles are manufactured goods needed in the project.

**(2) Unreasonable Cost.** 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 176.110.

**(3) Inconsistent With Public Interest.** The application of the restrictions of section 1605 of ARRA would be inconsistent with the public interest.

- Obtain waivers, as appropriate, to allow use of foreign construction materials. The approval process for the three waiver exception described above are:

**Non-availability.** The Assistant or Administrative Head of each Bureau may delegate to the Bureau Procurement Chief the determination that iron, steel or manufactured goods are not produced in the United States is sufficient, satisfactorily quality, and reasonably in available quantities.

**Unreasonable Cost.** The delegated Grants Officer or Contracting Officer may determine that the cost of domestic construction is unreasonable.

**Inconsistent With the Public Interest.** Prior approval must be submitted to the Assistant Secretary – Policy Management and Budget to determine if applying the domestic preference would be inconsistent with the public interest.

- When a determination is made for any of the three policy exceptions that certain foreign iron, steel, and/or manufactured goods may be used—
  - (1) List the excepted materials in the award; and
  - (2) All determinations of unreasonable costs must be supported by a “Foreign and Domestic Construction Materials Cost Comparison” table. In order to fully support the determination and provide for standardization in the documentation of the price comparisons, for all determinations of unreasonable cost, the cost comparison must be documented within the attached spreadsheet. Further, at least three responsible domestic suppliers must be surveyed for each foreign construction material compared.
  - (3) Publish a notice in the Federal Register within two weeks after the determination is made, unless the item has already been determined to be domestically unavailable. A list of items that are not domestically available can be found in 48 CFR 25.104(a). The Federal Register notice or information from the notice may be posted by OMB to [Recovery.gov](http://Recovery.gov). The notice must include:
    - (i) The title, “Buy American Act Exception under the American Recovery and Reinvestment Act of 2009;”
    - (ii) The dollar value and brief description of the project; and
    - (iii) A detailed written justification as to why the restriction is being waived.

**5. Additional Information:** For questions on this policy, please contact Anita Hairston, Financial Assistance Program Manager, at 202-208-5830 or [anita\\_hairston@ios.doi.gov](mailto:anita_hairston@ios.doi.gov).



Debra E. Sonderman, Director  
Office of Acquisition and Property Management and  
Senior Procurement Executive

Attachment

## Foreign and Domestic Construction Materials Cost Comparison

Department of the Interior, American Recovery and Reinvestment Act of 2009

Section 1605, Use of American Iron, Steel, and Manufactured Goods, Unreasonable Cost Exception Documentation.

Construction Material Description	Unit of Measure	Quantity	Acquisition Cost	Delivery Cost	Total Cost*	Name of Supplier	Address	Telephone #	Point of Contact
<b>FOREIGN MATERIAL</b>									
DOMESTIC MATERIAL #1 Survey									
DOMESTIC MATERIAL #2 Survey									
DOMESTIC MATERIAL #3 Survey									
<b>FOREIGN MATERIAL</b>									
DOMESTIC MATERIAL #1 Survey									
DOMESTIC MATERIAL #2 Survey									
DOMESTIC MATERIAL #3 Survey									

\*Documentation of the supplier responses and other supporting documentation must accompany this summary spreadsheet.