



Department of Energy
Washington, DC 20585

**ASSISTANT SECRETARY OF ENERGY
FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY**

MEMORANDUM OF DECISION

SUBJECT: Determination of inapplicability (unreasonable cost waiver) of section 1605 of the American Reinvestment and Recovery Act of 2009 (Recovery Act Buy American provisions) to the Texas State Energy Office, recipient of EECBG grant EE0000893, for 6300 Spanish Red Clay Tiles to be used on the Eagle Pass Library roof.

Under the authority of Recovery Act, Pub. L. 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 Acting 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.

The specific provision of the Texas Government Code, Chapter 442, Section 442.006(f), reads:

A person may not damage the historical or architectural integrity of a structure the commission has designated as a Recorded Texas Historic Landmark without notifying the commission at least 60 days before the date on which the action causing the damage is to begin. After receiving the notice, the commission may waive the waiting period or, if the commission determines that a longer period will enhance the chance for preservation, it may require an additional waiting period of not longer than 30 days. On the expiration of the time limits imposed by this section, the person may proceed, but must proceed not later than the 180th day after the date on which notice was given or the notice is considered to have expired.

Compliance with the Texas Secretary of the Interior's Standards for Rehabilitation 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.

CFR 2 § 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 $\$71,400 + (.25 \times \$71,400)$ 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.

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Acting Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of her 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.



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