



**Department of Energy**  
Washington, DC 20585

**GUIDANCE ON THE TERM "PROJECT" UNDER THE RECOVERY ACT BUY AMERICAN PROVISIONS**

**EFFECTIVE DATE: JUNE 18, 2010**

**SUBJECT: GUIDANCE FOR RECIPIENTS OF RECOVERY ACT FINANCIAL ASSISTANCE FROM THE OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY ON THE TERM "PROJECT" UNDER THE RECOVERY ACT BUY AMERICAN PROVISIONS**

**SCOPE:** This guidance applies to all state, local and tribal government recipients and sub-recipients (grantees and subgrantees) of Recovery Act financial assistance from the Office of Energy Efficiency and Renewable Energy (EERE).

**LEGAL AUTHORITY:** Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act; Pub. L. 111-5) sets forth the Buy American provisions for recipients of Recovery Act financial assistance. The Office of Management and Budget (OMB) issued interim final guidance for implementing the Buy American provision on April 23, 2009 at 74 Federal Register 18449 (codified at 2 CFR Part 176, Subpart B).

**GUIDANCE:** Section 1605 of the Recovery Act, Pub. L. 111-5, states "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" (emphasis added). Typically, DOE issues financial assistance agreements where each agreement represents a single project. In the case of formula grants such as the Weatherization Assistance Program, the State Energy Program, and the Energy Efficiency Conservation Block Grants, DOE has issued financial assistance awards that fund a multitude of individual activities. Therefore, it is necessary to clarify what qualifies as a project.

The term "program activity" is defined in 10 C.F.R. § 420.2 for formula grants under the State Energy Program as "one or more state actions, in a particular area, designed to promote energy efficiency, renewable energy and alternative transportation fuel." For Energy Efficiency Conservation Block Grant (EECBG) programs, there is a list of

eligible activities at 42 U.S.C. § 17154. The DOE financial assistance terms “program activity” and “eligible activity” are consistent with the term “project” in the Recovery Act Buy American provisions. However, the “project” for purposes of applying the Recovery Act Buy American provisions may not directly track with the work described on the “Activity Worksheet” for the EECBG awards.

If any of the funding for these eligible program activities is provided by the Recovery Act, then the “project” is covered by the Recovery Act Buy American provisions. Activities that are not funded by the Recovery Act are not covered by the Recovery Act Buy American provisions.

Private, philanthropic, state, local, tribal or other non-Recovery Act funds may be leveraged alongside or in addition to Recovery Act funds without becoming subject to the Recovery Act Buy American provisions, if these funds are used for activities undertaken as distinct, segregable actions using separate financial assistance agreements, contracts or subcontracts, and are not commingled with Recovery Act dollars to fund any part of the same program activity and eligible activity.

The purpose of EERE Recovery Act funding is to stimulate economic growth and job creation in communities nationwide through public investment in renewable energy and energy efficiency. If additional capital is available, it is in the best interest of the grantee and the country to mobilize this capital quickly and completely, thus advancing the goals of the Recovery Act.

However, please note that recipients must not alter or manipulate financial assistance agreements to separate program activities that would logically be grouped together just to avoid application of the Recovery Act Buy American provisions. Also, recipients cannot segregate cost share funds from Recovery Act funds to avoid application of the Recovery Act Buy American provisions.

The determination of what constitutes a project is very fact specific. The examples below are provided for general guidance only. If recipients have questions on the specific facts of their award, they should contact the Contracting Officer responsible for their grant.

#### Example A

A city plans to construct a \$3 million wing to an existing police station, funded by non-Recovery Act funds. The city also receives Recovery Act funds for solar lights on the parking structure of the main police station building. The city bids the construction of the wing and the installation of the solar panels on the parking lot to the main building separately and uses separate instruments for the work. Under this circumstance, the projects are funded by separate funds and are distinct activities, even though they are both upgrading the police station. The construction of the wing using non-Recovery Act funds would not be governed by the Buy American provisions.

### Example B

A state energy office provides funding to ten different cities within the state to conduct energy efficiency retrofits. The individual cities then went to bid and signed individual contracts to perform the work. Each retrofit would be considered a separate project because they are occurring in different locations (areas) under separate contracts.

### Example C

A city has plans to renovate an existing police station. This planned renovation is funded by non-Recovery Act funds. The city then receives Recovery Act funds and decides to purchase energy efficient windows and lights for the police station. The city bids the renovation work and the purchase of the windows and lights separately and uses separate instruments for the work. Under this circumstance, the activities are distinct and separate because the new windows and lights were not part of the original plan for the renovation and would be separate and additional work to the original renovation. Therefore, the broader renovation of the existing police station using non-Recovery Act funds would not be governed by the Buy American provisions, whereas the purchase of the windows and lights would be.