

From: Updyke, Craig
Sent: Thursday, July 23, 2009 1:33 PM
To: Cadieux, Gena
Cc: Silcox, Clark
Subject: DOE Q&A re Buy American

Dear Ms. Cadieux,

My name is Craig Updyke and I work for the National Electrical Manufacturers Association (NEMA). I am writing to you, Assistant General Counsel for Procurement and Financial Assistance, today on behalf of NEMA's Lighting Systems Division regarding a published Department of Energy interpretation of the application of the Buy American provisions of the ARRA to lighting equipment. Thank you in advance for your assistance in reviewing, confirming or clarifying this interpretation at your earliest convenience.

Specifically, the following Question and Answer are included in a Recovery Act Energy Efficiency Community Block Grant Q & A set attached to this message (please see page 34 of the file and the text indicated by the red box) and available in another form on the internet at <http://oxford.seiinc.org:8012/eecbg%20Q&A/recordlist.php?-skip=61&-max=25>.

Q. Fluorescent lighting retrofit. We are planning to upgrade lighting throughout 15 schools. The ceiling fixtures will remain in place, but new lamps and ballasts will be installed. The electronic ballasts that we use are made outside the U.S. (as are almost all fluorescent fixture ballasts these days). The fixtures themselves were made in the U.S. May we specify these foreign-made ballasts for use in American fixtures?

A. Yes. The Buy American Act specifically refers to "steel, iron and other manufactured goods" used in the construction, alteration etc of public buildings and public works. We would consider the lighting items as supply items, not construction item. They are therefore acceptable.

Is this interpretation correct and consistent? The writer of the answer appears to interpret the retrofit project as not constituting "alteration" of the public building. The writer also does not make reference to Buy American requirements that apply to procurement of supplies.

This interpretation is of great interest to us since NEMA agrees with the questioner that these products are almost all made outside the U.S. Accordingly, NEMA is preparing to write to DOE requesting an agency waiver for fluorescent electronic lamp ballasts from the Buy American requirements of the Recovery Act based on nonavailability and public interest so that similar ballast retrofit projects are not hampered or delayed due a need for project-based Buy American waivers. NEMA has already written to two other federal agencies with identical requests.

Once again, thank you very much for your consideration and assistance. We look forward to your reply.

Respectfully,

Craig Updyke
Manager, Trade & Commercial Affairs
National Electrical Manufacturers Association (NEMA)

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