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[ 6450-01-P]

**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**Nationwide Categorical Waivers under the American Recovery and Reinvestment Act of 2009 (Recovery Act)**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

**ACTION:** Notice of Limited Waivers

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality), with respect to Recovery Act projects funded by EERE for 1) Energy-efficient impeller (N-impeller) to retrofit existing Flygt pumps, and 2) Expansion Module Assembly to repair existing Johnson Controls Lab and Hood Fume Interface with Phoenix Controls Hood (where utilization of an American made module assembly would require replacement of the existing system).

**DATES:** Effective Date: 07/18/2012

**FOR FURTHER INFORMATION CONTACT:** Christine Platt-Patrick, Office of Energy Efficiency and Renewable Energy (EERE), (202) 586-7691, Department of Energy, 1000 Independence Avenue SW., Mailstop EE-2K, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. No. 111-5, section 1605(b)(2), the head of a Federal department or agency may issue a “determination of inapplicability” (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality (“nonavailability”). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redlegation Order No. 00-002.01E, dated April 25, 2011. Pursuant to this delegation the Assistant Secretary, EERE, has concluded that: 1) Energy-efficient impellers (N-impeller) to retrofit existing Flygt pumps; 2) Expansion module assemblies to repair existing Johnson Controls lab and hood fume interface with Phoenix Controls hood (where utilization of an American made module assembly would require replacement of the existing system); 3) magnetic ballasts for HID retrofits; and 4) direct line voltage, color-changing architectural LED flood lighting fixtures, color-changing architectural LED cove lighting products, white LED line voltage architectural cove lighting fixtures, exterior, LED color-changing direct

view lighting fixtures, and multicolor DMX-512 LED wash and array lights for architectural lighting, are not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above items, when used on eligible EERE Recovery Act-funded projects, qualify for the “nonavailability” 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 determinations.

The 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.

The EERE Buy American Coordinator worked with manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to

supplement these scouting efforts. EERE's research efforts confirmed that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers for the items have been unsuccessful.

Specific technical information for the manufactured goods included in this non-availability determination is detailed below:

Energy-efficient impeller (N-impeller) to retrofit existing Flygt pumps. The impeller was specifically designed to fit and be compatible with the existing electric submersible pumps only available from the existing pump's manufacturer. The components are a cast iron N-technology, self-cleaning solids-handling pump impeller and cast iron N-technology pump impeller insert ring. The impeller is used to upgrade the performance of the existing solids-handling pumps resulting in superior non-clog operations and delivering sustained high efficiency, resulting in long-term, lower cost and energy efficient operation. Utilization of an American made N-Impeller would require replacement of the entire existing system.

Expansion module assemblies to repair existing Johnson Controls lab and hood fume interface with Phoenix Controls hood. The components were specifically designed to fit

and be compatible with the existing hood fume system, utilization of an American made module assembly would require replacement of the entire existing system.

Magnetic ballasts for HID retrofits. Although electronic ballasts are widely available from US manufacturers, a US manufacturer of magnetic ballasts was not identified through a thorough search by EERE, MEP and several trade groups.

Direct line voltage, color-changing architectural LED flood lighting fixtures, color-changing architectural LED cove lighting products, white LED line voltage architectural cove lighting fixtures, exterior, LED color-changing direct view lighting fixtures; and multicolor DMX-512 LED wash and array lights for architectural lighting.

The specific types of LED fixtures, used in architectural lighting, are not available from domestic manufacturers. MEP and EERE identified a number of US LED manufacturers, but none that produce items for this application.

In light of the foregoing, and under the authority of section 1605(b)(2) of Pub. L. No. 111-5 and Redeleation Order 00-002-01E, with respect to Recovery Act projects funded by EERE, I hereby issue a “determination of inapplicability” (a waiver under the Recovery Act Buy American provision) for: 1) Energy-efficient impellers (N-impeller) to retrofit existing Flygt pumps; 2) Expansion module assemblies to repair existing Johnson Controls lab and hood fume interface with Phoenix Controls hood (where utilization of an American made module assembly would require replacement of the existing system); 3) magnetic ballasts for HID retrofits; and 4) direct line voltage, color-changing architectural LED flood lighting fixtures, color-changing architectural LED cove lighting products, white LED line voltage architectural cove lighting fixtures, exterior, LED

color-changing direct view lighting fixtures, and multicolor DMX-512 LED wash and array lights for architectural lighting.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on July 18, 2012, four (4) nationwide categorical waiver of section 1605 of the Recovery Act was issued as detailed *supra*. This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies to all EERE projects carried out under the Recovery Act.

Authority: Pub. L. 111-5, section 1605.

Issued in Washington, DC on July 18, 2012

David T. Danielson  
Assistant Secretary  
Energy Efficiency and Renewable Energy  
U.S. Department of Energy

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