



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NUMBER
GSD116459

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
KRISTA FERRELL 304-558-2596

VENDOR

RFQ COPY  
 TYPE NAME/ADDRESS HERE

SHIP TO

DEPARTMENT OF ADMINISTRATION  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
05/05/2011				

BID OPENING DATE: 05/19/2011 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
ADDENDUM NO. 1						
THIS ADDENDUM IS ISSUED TO:						
1.) REISSUE THE SPECIFICATION IN ENTIRETY PER THE ATTACHED.						
NOTE: ALL REFERENCES TO INSTALLATION OF THE LIGHTING AND CONSTRUCTION PROVISIONS ARE HEREBY DELETED.						
0001	1	LS		285-54		
EMERGENCY LIGHTING FOR ARA PROJECTS						
REVISED 05/05/2011 PER ADDENDUM NO. 1						
REQUEST FOR QUOTATION (RFQ)						
AARA STIMULUS PROJECT						
THE WEST VIRGINIA STATE PURCHASING DIVISION FOR THE AGENCY, THE WEST VIRGINIA DIVISION OF GENERAL SERVICES, IS SOLICITING BIDS TO PROVIDE THE AGENCY WITH ALL LIGHTING IN THREE (3) DEPARTMENT OF ADMINISTRATION OWNED AND OPERATED BUILDINGS (BUILDINGS #22, 23, AND #36) LOCATED IN CHARLESTON AND BECKLEY, WEST VIRGINIA PER THE ATTACHED SPECIFICATIONS.						
THIS CONTRACT IS FOR MATERIALS ONLY. NO INSTALLATION.						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

**GENERAL TERMS & CONDITIONS**  
**REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
5. Payment may only be made after the delivery and acceptance of goods or services.
6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at [www.state.wv.us/admin/purchase/vrc/hipaa.htm](http://www.state.wv.us/admin/purchase/vrc/hipaa.htm) and is hereby made part of the agreement. Provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

**INSTRUCTIONS TO BIDDERS**

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

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 KRISTA FERRELL  
 304-558-2596

RFQ COPY

TYPE NAME/ADDRESS HERE

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DEPARTMENT OF ADMINISTRATION  
 VARIOUS LOCALES AS INDICATED  
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TECHNCIAL QUESTIONS CONCERNING THIS SOLICITATION MUST BE SUBMITTED IN WRITING TO KRISTA FERRELL IN THE WEST VIRGINIA STATE PURCHASING DIVISION VIA MAIL AT THE ADDRESS SHOWN IN THE BODY OF THIS RFQ, VIA FAX AT 304-558-4115, OR VIA EMAIL AT KRISTA.S.FERRELL@WV.GOV.

DEADLINE FOR ALL TECHNICAL QUESTIONS IS 05/10/2011 AT THE CLOSE OF BUSINESS.

VERBAL COMMUNICATION BETWEEN THE VENDOR AND ANY STATE PERSONNEL IS NOT BINDING. ONLY INFORMATION ISSUED IN WRITING AND ADDED TO THE RFQ SPECIFICATIONS BY A FORMAL WRITTEN ADDENDUM IS BINDING.

NO CONTACT BETWEEN THE VENDOR AND THE AGENCY IS PERMITTED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE STATE BUYER. VIOLATION MAY RESULT IN REJECTION OF THE BID. THE STATE BUYER NAMED ABOVE IS THE SOLE CONTACT FOR ALL INQUIRIES AFTER THIS RFQ HAS BEEN RELEASED.

THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH THE ACCEPTABLE LEVEL OF QUALITY ONLY AND ARE NOT INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR REJECTION OF THE BID. THE STATE RESERVES THE RIGHT TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATION IN ACCORDANCE WITH SECTION 148-1-4(F) OF THE WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS.

EXHIBIT 10

ADDENDUM ACKNOWLEDGEMENT

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
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I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CHECKED  
 ADDENDUM(S) AND HAVE MADE THE NECESSARY REVISIONS TO  
 MY PROPOSAL, PLANS AND/OR SPECIFICATION, ETC.

ADDENDUM NOS :

- NO. 1 . . . . .
- NO. 2 . . . . .
- NO. 3 . . . . .
- NO. 4 . . . . .
- NO. 5 . . . . .

I UNDERSTAND THAT FAILURE TO CONFIRM THE RECEIPT OF TH  
 ADDENDUM(S) MAY BE CAUSE FOR REJECTION OF THE BIDS.

VENDOR MUST CLEARLY UNDERSTAND THAT ANY VERBAL  
 REPRESENTATION MADE OR ASSUMED TO BE MADE DURING ANY  
 ORAL DISCUSSION HELD BETWEEN VENDOR'S REPRESENTATIVES  
 AND ANY STATE PERSONNEL IS NOT BINDING. ONLY THE  
 INFORMATION ISSUED IN WRITING AND ADDED TO THE  
 SPECIFICATIONS BY AN OFFICIAL ADDENDUM IS BINDING.

.....SIGNATURE  
 .....COMPANY  
 .....DATE

REV. 11/96

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

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<p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THE STATE MAY DEEM THE CONTRACT NULL AND VOID, AND TERMINATE SUCH CONTRACT WITHOUT FURTHER ORDER.</p> <p>REV. 5/2009</p> <p style="text-align: center;">NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p style="text-align: center;">DEPARTMENT OF ADMINISTRATION            PURCHASING DIVISION            BUILDING 15            2019 WASHINGTON STREET, EAST            CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: KRISTA FERRELL-FILE 21</p> <p>REQ. NO.: GSD116459</p> <p>BID OPENING DATE: 05/19/2011</p> <p>BID OPENING TIME: 1:30 PM</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p>-----</p>						
SEE REVERSE SIDE FOR TERMS AND CONDITIONS						
SIGNATURE			TELEPHONE		DATE	
TITLE		FEIN		ADDRESS CHANGES TO BE NOTED ABOVE		

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RFQ COPY

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LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
PLEASE PRINT OR TYPE NAME OF PERSON TO CONTACT CONCERNING THIS QUOTE: -----						
***** THIS IS THE END OF RFQ GSD116459 ***** TOTAL: _____						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE		TELEPHONE		DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE		

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State of West Virginia  
General Services Division

West Virginia State Capitol  
GSD116459 Lighting Purchase

**REQUEST FOR QUOTATIONS #GSD116459**  
**PURCHASE OF EMERGENCY LIGHTING FOR VARIOUS DOA OWNED**  
**FACILITIES**

Location: West Virginia Department of Administration  
General Services Division  
1900 Kanawha Boulevard East  
Building One, Room MB60  
Charleston, West Virginia 25305

For: State of West Virginia  
General Services Division  
1900 Kanawha Boulevard, East  
Building One, Room MB60  
Charleston, West Virginia 25305

All inquiries for specification clarification shall be addressed to:

Krista Ferrell, Buyer Supervisor  
Purchasing Division  
P.O. Box 50130  
Charleston, West Virginia 25305-0130  
Fax: (304) 558-4115  
[krista.s.ferrell@wv.gov](mailto:krista.s.ferrell@wv.gov)

The Acquisition and Contract Administration Section of the Purchasing Division "State" for the West Virginia General Services Division is soliciting quotations for the purchase of various emergency lighting fixtures.

Successful bidder will be given fourteen (14) calendar days from the issuance of the Purchase Order to provide and deliver the listed light fixtures to the facilities listed herein.

Any services contracted for prior to receipt of the signed purchase order and notice-to-proceed letter shall be at the Bidder's risk.

THIS PROJECT IS PAID FOR WITH FEDERAL FUNDING THROUGH THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009. Three major provisions addressed with this project, and which must be adhered to, are the BUY AMERICA ACT, The DAVIS BACON ACT, and the HISTORIC PRESERVATION ACT. The Owner has achieved compliance with the HISTORIC PRESERVATION ACT by having contacted and received approval from the State Historic Preservation Office

State of West Virginia  
General Services Division

West Virginia State Capitol  
GSD116459 Lighting Purchase

for this project. By signing the Proposal Form, all bidders verify they understand, accept and will comply with these Federal requirements.

**General Conditions**

- A. Vendor must supply 12-month (or greater) manufacturer’s warranty for product.
- B. Freight will be FOB-Destination; all charges for delivery of equipment to each location in Charleston and Beckley must be incorporated into the bid.
- C. Award will be made to the lowest Total Bid.

**Technical Specifications**

Brand and model specifications are given to establish the acceptable level of performance and quality only, and not to limit competition. Bidders wishing to bid based upon substitute brands and models should submit a request to substitute the brand and model they wish to bid as a technical question, per the instructions for submitting technical questions in the Request for Quotation (RFQ). Approvals and refusals of these requests will be given by addenda to the RFQ.

**Buy American Provisions**

This project must use American iron, steel or manufactured goods as required by the BUY AMERICA ACT. Refer to the attached documents, “EERE Buy American Documentation Guidance” and “EERE Substantial Transformation Guidance.” The successful Vendor shall be required to meet all documentation requirements to insure compliance with the BUY AMERICA ACT.

**Building 23, Beckley, WV**  
**407 Neville Street**  
**Beckley, WV**

<b><u>Manufacturer Model</u></b>	<b><u>QTY</u></b>
<u>Lithonia ELM2 LED (or equal)</u>	<u>190</u>
<u>Lithonia LHOM LED SW3R (or equal)</u>	<u>35</u>
<u>WP 1 54T5HO</u>	
<u>Lithonia MVOLT GEB10PS (or equal)</u>	<u>38</u>
<u>Lithonia IBZT5 4 (or equal)</u>	<u>20</u>
<u>2SP5 G 3 28T5</u>	
<u>A12125 MVOLT</u>	
<u>Lithonia GEB10PS (or equal)</u>	<u>36</u>



State of West Virginia  
General Services Division

West Virginia State Capitol  
GSD116459 Lighting Purchase

**Building 36, One Davis Square**  
**321 Capitol Street**  
**Charleston, WV 25301**

<b><u>Manufacturer Model</u></b>	<b><u>QTY</u></b>
<u>WP 1 54T5HO</u>	
<u>Lithonia MVOLT GEB10PS (or equal)</u>	<u>30</u>

**Building 22, Tax and Revenue**  
**1001 Lee Street**  
**Charleston, WV 25301**

<b><u>Manufacturer Model</u></b>	<b><u>QTY</u></b>
<u>Lithonia ELM2 LED (or equal)</u>	<u>145</u>
<u>Lithonia LHQM LED SW3R (or equal)</u>	<u>55</u>
<u>WP 1 54T5HO</u>	
<u>Lithonia MVOLT GEB10PS (or equal)</u>	<u>48</u>
<u>2SP5 G 3 28T5</u>	
<u>A12125 MVOLT</u>	
<u>Lithonia GEB10PS (or equal)</u>	<u>18</u>

**Documents:**

This Request for Quotations also incorporates the attached documents:

1. The WV Purchasing Division "Request for Quotation" and "General Terms and Conditions".
2. GSD116459 Bid Form
3. GSD116459 EERE Buy American Documentation Guidance
4. GSD116459 EERE Substantial Transformation Guidance

**Federal Funding Disclaimer:**

This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the

State of West Virginia  
General Services Division

West Virginia State Capitol  
GSD116459 Lighting Purchase

United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or agency thereof.”

**Invoices**

Invoices shall be submitted to the Agency for payment (in arrears) and must include the following information:

1. Copies of all BOL’s signed and dated by the Agency Representative (prior to their submittal with invoices for payment).
2. FEIN number, complete address of vendor, Agency release order number, and master contract number.

Invoices shall be mailed to the following address:

Department of Administration  
 General Services Division  
 State Capitol Complex  
 Building 1, Room MB-68  
 1900 Kanawha Blvd. E.  
 Charleston, West Virginia 25305

Should the Vendor be requested by the Agency or volunteer to submit invoices electronically, invoices must meet the digital requirements of the WV State Auditor’s Office.

**Additional Terms and Conditions**

- A. The relationship of the Vendor to the Agency shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. The Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this contract. Neither the Vendor nor any employees or sub-contractors of the Contractor shall be deemed to be employees for the State for any purposes whatsoever. The wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred obligations, and licensing fees, etc., and the filing of all necessary documents, forms and returns pertinent to all of the foregoing are the Vendor’s responsibility. The Vendor shall hold harmless the State, and must provide the State and Agency with a defense against any and all

State of West Virginia  
General Services Division

West Virginia State Capitol  
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claims including but not limited to the foregoing payments, withholdings, contributions, taxes, social security taxes and employer income tax returns. The Vendor shall not assign, convey, transfer, sub-contract, or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Agency.

- B. Indemnification: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against (1) Any claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; (3) Any failure of the Vendor, its officers, employees or sub-contractors to observe State and Federal laws, including but not limited to labor and wage laws.
- C. The Vendor shall, upon any service visit to any location, acquire the signature of the Agency representative designated to sign for such delivery. No charge for any delivery to any location at any time will be verified without that signature. No payment will be made for any delivery which is not verified. Upon award of contract, Agency will provide vendor with exact locations and addresses for all deliveries and the names of the Agency representatives for said locations. The Vendor shall be expected to coordinate delivery schedule with Agency to insure signature verification is available.

## GSD116459-Attachment A-Bid Form

LOCATION	Unit Cost	Qty	Extended Cost
<b><u>Building 23 Beckley</u></b>			
Lithonia ELM2 LED (or equal)	\$ _____	190	\$ _____
Lithonia LHQM LED SW3R (or equal)	\$ _____	35	\$ _____
Lithonia WP 1 54T5HO MVOLT GEB10PS (or equal)	\$ _____	38	\$ _____
Lithonia IBZT5 4 (or equal)	\$ _____	20	\$ _____
Lithonia 2SP5 G 3 28T5 A12125 MVOLT GEB10PS (or equal)	\$ _____	36	\$ _____
TOTAL Building 23			\$ _____ (A)
<b><u>Building 36, One Davis Square</u></b>			
Lithonia WP 1 54T5HO MVOLT GEB10PS (or equal)	\$ _____	30	\$ _____
TOTAL Building 36			\$ _____ (B)
<b><u>Building 22, Tax and Revenue</u></b>			
Lithonia ELM2 LED (or equal)	\$ _____	145	\$ _____
Lithonia LHQM LED SW3R (or equal)	\$ _____	55	\$ _____
Lithonia WP 1 54T5HO MVOLT GEB10PS (or equal)	\$ _____	48	\$ _____
Lithonia 2SP5 G 3 28T5 A12125 MVOLT GEB10PS (or equal)	\$ _____	18	\$ _____
TOTAL Building 22			\$ _____ (C)
TOTAL BID (A + B + C) = D			\$ _____ (D)



**Department of Energy**  
Washington, DC 20585

**GUIDANCE ON MANUFACTURED GOODS AND SUBSTANTIAL  
TRANSFORMATION FOR FINANCIAL ASSISTANCE AWARDS**

**EFFECTIVE DATE: MAY 24, 2010**

**SUBJECT: GUIDANCE ON MANUFACTURED GOODS AND SUBSTANTIAL  
TRANSFORMATION FOR FINANCIAL ASSISTANCE AWARDS**

**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 (2 CFR Part 176) for implementing the Buy American provision on April 23, 2009 at 74 Federal Register 18449.

**GUIDANCE:** Section 1605 of the Recovery Act 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." The Office of Management and Budget's (OMB) guidance on implementing this section defines "manufactured good" as a "good brought to the construction site for incorporation into the building or work that has been processed into a specific form and shape; or combined with other raw material to create a material that has different properties than the properties of the individual raw materials." *See* 2 C.F.R. § 176.140(a)(1).

The OMB guidelines further define a "domestic manufactured good" as "a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States." *See* 2 C.F.R. § 176.160(a).

We interpret, "Produced in the United States," to mean that the production or manufacturing facility is physically located in the United States or its territories. The domicile of the parent company, subsidiary, distributor, or supplier is not relevant for determining compliance with the Recovery Act Buy American provision.

Substantial transformation has long been applied in judicial and administrative customs cases on labeling, national origin, and other Federal statutory requirements as the appropriate and effective way to identify where a good was manufactured. The courts have determined what constitutes substantial transformation on a case-by-case basis. The Environmental Protection Agency (EPA) has issued guidance for its Recovery Act projects interpreting the substantial transformation test found at *Complying with ARRA Buy American Provisions for SRF-Funded Projects*, June 22, 2009 [www.epa.gov/water/eparecovery](http://www.epa.gov/water/eparecovery). The following questions provided therein may be helpful to determine whether or not substantial transformation has occurred. It is likely that substantial transformation has occurred in the U.S. if the answer is "yes" to either (or a combination of) Question 1, 2, or 3 below:

1. Were all of the components of the manufactured good manufactured in the U.S., and were all of the components assembled into the final production in the U.S.? (If the answer is yes, then it is clearly manufactured in the U.S., and the inquiry is complete.)
2. Was there a change in character for use of the good or the components in the U.S.? (These questions are asked about the finished good as a whole, not about each individual component.)
  - a. Was there a change in the physical and/or chemical properties or characteristics designed to alter the functionality of the good?
  - b. Did the manufacturing or processing operation result in a change of a product(s) with one use into a product with a different use?
  - c. Did the manufacturing or processing operation result in the narrowing of the range of possible uses of a multi-use product?

If the answer is yes to any of 2a, 2b, or 2c, then the answer to Q.2 is yes.

3. Was/were the processe(es) performed in the U.S. (including but not limited to assembly) complex and meaningful?
  - a. Did the process(es) take a substantial amount of time?
  - b. Was/were the process(es) costly?
  - c. Did the process(es) require a number of different operations?
  - d. Did the processes require particular high level skills?
  - e. Was substantial value added in the process(es)?

If the answer is yes to at least two of 3a, 3b, 3c, 3d, or 3e, then the answer to Q.3 is yes.

These questions all focus on manufacturing, processing, assembly, or integration of the components or subcomponents into a finished good. Design, planning, procurement, component production, or any other step prior to the process of physically bringing together the components into the item used in and incorporated into the Recovery Act project cannot constitute part of substantial transformation.

If the parts at issue are components (or subcomponents) of a larger manufactured good that is domestically manufactured, or substantially transformed, in the United States, then the Buy American Recovery Act requirement does not apply.

The responsibility for determining whether the parts are components of a larger manufactured good, and whether the good is manufactured in the United States rests with the Recovery Act financial assistance recipient. Recipients should consult with their own legal counsel concerning the basis for substantial transformation. Based on the requirements of the Recovery Act and OMB's guidance on the Recovery Act, DOE cannot approve or disapprove a Recovery Act recipient's determination that a manufactured good has been substantially transformed in the United States. However, DOE Contracting Officers may request additional information to support the credibility of the recipient's analysis of substantial transformation. It is the recipient's responsibility to ensure that all information and documentation that supports a substantial transformation determination is accurate and complete and is retained for audit purposes. If recipients have reasonable doubt about the substantial transformation of a given manufactured good, and they believe that one of the exceptions outlined in the Recovery Act apply (such as domestic "nonavailability"), then the recipient may apply for a waiver based on that exception.



Cathy Zoi  
Assistant Secretary for Energy Efficiency and Renewable Energy  
U.S. Department of Energy

May 24, 2010



**Department of Energy**  
Washington, DC 20585

**GUIDANCE ON DOCUMENTING COMPLIANCE WITH THE RECOVERY ACT BUY AMERICAN PROVISIONS**

**EFFECTIVE DATE:** May 24, 2010

**SUBJECT: GUIDANCE FOR RECIPIENTS OF RECOVERY ACT FINANCIAL ASSISTANCE FROM THE OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY ON DOCUMENTING COMPLIANCE WITH THE RECOVERY ACT BUY AMERICAN PROVISIONS.**

**PURPOSE:** To provide information on the roles and responsibilities of different stakeholders in documenting compliance with section 1605 (the Buy American provisions) of the Recovery Act.

**SCOPE:** This guidance applies to 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.

**DEFINITIONS: Public building or public work** means a public building of, or a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; state and local governments; and multi-state, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Indian tribes are also considered governmental entities for the purpose of defining "public building or public work" and are therefore subject to the Buy American provisions of the Recovery Act.



**A manufactured good** is defined as a good brought to the construction site for incorporation into the public building or work that has been processed into a specific form and shape or combined with other materials to create a material that has a different property than the individual raw materials.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States.<sup>1</sup>

**GUIDANCE:** Recipients of EERE financial assistance funded by the Recovery Act must comply with the requirement in section 1605 that all of the iron, steel, and manufactured goods used for a project for the construction, alteration, maintenance, or repair of a public building or public work be produced in the United States, unless one of the three listed exceptions applies and EERE issues a waiver, or a recipient can legally avail itself of the United States' obligations under international agreements.

Recipients should retain documentation that supports their compliance with the Buy American provisions. During post-award monitoring activities, which may include desk reviews, on-site reviews, audits, and other activities, recipients may be asked to produce records sufficient to verify compliance with the Recovery Act Buy American provisions.

Such documentation could include: (1) language in contractual documents that obligates sub-recipients and/or contractors to comply with the Buy American provisions; (2) receipts for items produced domestically indicating such; (3) a documented certification from the contractor, vendor, distributor, supplier, or manufacturer verifying that the product was manufactured domestically; (4) detailed and verifiable information supporting the claim that the manufactured good has undergone substantial transformation in the United States; and/or (5) other reasonable documentation per the discretion of the state, local, or tribal government financial assistance recipient demonstrating compliance with the Buy American provisions.

There are no specific requirements imposed by the Recovery Act or the Office of Management and Budget (OMB) guidance in 2 CFR 176 concerning the type of documentation necessary to prove compliance with the Recovery Act Buy American provisions. Therefore, grantees are encouraged to reference their obligations under the Department of Energy's Financial Assistance Rules, 10 CFR Part 600 and their individual financial assistance award provisions.

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<sup>1</sup> See 2 CFR 176.70(a)(2)(ii).

## **Department of Energy Financial Assistance Rules**

### *State Recipients*

According to the Department of Energy's Financial Assistance Rules found at 10 CFR § 600.220, "Standards for financial management systems," Section (a) and sub-section (a)(2), "A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as is subgrantees and cost-type contractors must be sufficient to -- ...[p]ermit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes." Additionally, according to 10 C.F.R. § 600.237(a)(1), States shall ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations (including the Buy American provisions).

### *Local Government and Tribal Recipients*

The Department of Energy's Financial Assistance Rules found at 10 CFR § 600.220, "Standards for financial management systems," Section (b)(2) *Accounting records*, states that "[g]rantees [other than States] and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities..."

For purposes of Buy American documentation, the types of documentation identified in the list above (numbers 1-5) should be sufficient to satisfy the requirements set forth for State, local governments, and tribal recipients in the Financial Assistance Rules. However, States, local governments and tribes are encouraged to consult with their General Counsel's offices, to ensure compliance with the Buy American provisions and 10 CFR § 600.220(a) and (b) more broadly.

## **OMB Circular A-133**

In addition to the procurement documentation guidance provided above, grantees should also be mindful of the standard Federal assistance audit guidance defined in OMB Circular A-133 for state and local governments.

The DOE Acquisition and Financial Assistance Implementation Guide for the American Recovery and Reinvestment Act of 2009 [p. 3-3, section 3.4(1)] states: "Non-Federal entities (States, local governments, tribes and non-profit organizations) are required by the Single Audit Act Amendments of 1996 (Single Audit) and OMB Circular A-133, to have an annual audit of the federal awards (e.g. grant programs)." This requirement generally applies to Non-Federal entities that expend \$500,000 or more in Federal awards in a fiscal year, and stipulates that they shall have a single or program-specific audit conducted for that year, in accordance with the provisions of OMB Circular A-133. Recipients are encouraged to review OMB Circular A-133, Subpart B, Sections 200

through 235 for the audit requirements for Non-Federal assistance recipients. Additionally, recipients should review the Federal Audit Clearinghouse website for instructions on how to appropriately submit Single Audits.

**Single Audit Information for Recipients of American Recovery and Reinvestment Act Funds (2 CFR 176 Subpart D and OMB A-133 Compliance Supplement: Appendix VII)**

Recovery Act financial assistance recipients subject to OMB Circular A-133 should also closely follow 2 CFR 176.210 (Subpart D) and OMB A-133 Compliance Supplement: Appendix VII, general instructions regarding recipient responsibilities for tracking and documenting sub-recipient expenditures of Recovery Act funds on the Schedule of Expenditures of Federal Awards" (SEFA).

**Sub-awards, Sub-recipients and Vendors**

The Special Terms and Conditions applicable to Recovery Act funded projects require that the financial assistance recipient flow down the Recovery Act special terms and conditions in any subaward or subcontract.

In 2 C.F.R. § 176.30, the OMB defines the term "sub-award" to include a "legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible sub-recipient." A sub-recipient means a "non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other Federal awards directly from a Federal awarding agency." (2 C.F.R. § 176.30)

Subcontract is defined as "a legal instrument used by a recipient for procurement of property and services needed to carry out the project or program."

Note that the definition of a "sub-recipient" in 2 C.F.R. § 176.30 specifically excludes "the recipient's procurement of property and services needed to carry out the project or program." This section refers to OMB Circular A-133 to distinguish between a sub-recipient and a vendor. A vendor is defined in OMB Circular A-133 as "a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program."

Based on the fact that the Special Terms and Conditions flow down to all subawards and sub-contracts, and the fact that a vendor is not a subawardee, sub-recipient, or sub-contractor, the Recovery Act financial assistance recipient and sub-recipients are not required to flow down the Recovery Act's Special Terms and Conditions to vendors. However, financial assistance recipients, sub-recipients and subawardees are ultimately

responsible for complying with the Special Terms and Conditions, and should take whatever measures they deem necessary to ensure that the Buy American requirements of the Recovery Act are adhered to by their respective vendors.

**CONCLUSION:** Please be advised that the Department of Energy cannot answer all questions on a case-by-case basis concerning the appropriate levels of documentation needed to verify compliance with the Recovery Act Buy American provisions. Therefore, financial assistance recipients should consult with their legal counsel in order to ascertain whether they have secured adequate documentation in accordance with the Department of Energy's Financial Assistance Rules found at 10 C.F.R. § 600.220.

To summarize, recipients of EERE Recovery Act financial assistance should take the following steps toward demonstrating compliance with the Buy American provisions:

1. State and local governments and tribes must follow their own procurement policies and procedures, per 10 CFR 600.236, "Procurement", and are expected to maintain maximum oversight over their project and procurement activities with regards to Buy American compliance.
2. Recipients should maintain documentation at a level they feel is appropriate to show compliance with the Recovery Act Buy American provisions.
  - a. A list of recommended documentation is outlined above.
3. In addition, in order to ensure broader compliance with any potential audit, grantees should (1) determine whether a single audit or program audit is applicable (see OMB Circular A-133), and should then initiate the appropriate audit review process.
4. Moreover, grantees subject to OMB Circular A-133 should also maintain ongoing compliance with SEFA requirements (2 CFR 176.210 and OMB A-133 Compliance Supplement).

**Resources for further review:**

**Section 1605 (Buy American provisions) of the American Recovery and Reinvestment Act (Pub. L. 111-5)**

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=63f99139a28cbcd199c115ec9d34faf0&rgn=div5&view=text&node=2:1.1.1.2.3&idno=2>

**Full Text of the American Recovery and Reinvestment Act (Pub. L. 111-5)**

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h1enr.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf)

**Department of Energy's Financial Assistance Rules [10 C.F.R. Part600]**

[http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title10/10cfr600\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title10/10cfr600_main_02.tpl)

**OMB Circular A-133:** This document identifies Audit roles and responsibilities pertaining to the State and local governments, including tribal entities.  
<http://www.whitehouse.gov/omb/rewrite/circulars/a133/a133.html>

**OMB Circular A-133 Compliance Supplement – Appendix VII  
Other OMB Circular A-133 Advisories:**  
[http://www.whitehouse.gov/omb/assets/a133\\_compliance/app\\_7.pdf](http://www.whitehouse.gov/omb/assets/a133_compliance/app_7.pdf)

**2 CFR 176.210:** This section of the Code of Federal Regulations provides the guidelines for the required Recovery Act expenditure documentation pertaining to “Recovery Act Transactions Listed in the Schedule of Expenditures of Federal Awards and Recipient Responsibilities for Informing Sub-recipients.”  
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=f03ceaca224c1a658c2ad682f212e869&rgn=div8&view=text&node=2:1.1.1.2.3.4.1.2&idno=2>

**Federal Audit Clearinghouse:** <http://harvester.census.gov/sac/>

**DOE Acquisition and Financial Assistance Implementation Guide for the American Recovery and Reinvestment Act of 2009**  
[http://management.energy.gov/policy\\_guidance/1672.htm](http://management.energy.gov/policy_guidance/1672.htm)



Cathy Zoi  
Assistant Secretary for Energy Efficiency and Renewable Energy  
U.S. Department of Energy

May 24, 2010

State of West Virginia

**VENDOR PREFERENCE CERTIFICATE**

Certification and application\* is hereby made for Preference in accordance with **West Virginia Code**, §5A-3-37. (Does not apply to construction contracts). **West Virginia Code**, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the **West Virginia Code**. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

- 1. **Application is made for 2.5% resident vendor preference for the reason checked:**  
 Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,  
 Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,  
 Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; **or**,
- 2. **Application is made for 2.5% resident vendor preference for the reason checked:**  
 Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,
- 3. **Application is made for 2.5% resident vendor preference for the reason checked:**  
 Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,
- 4. **Application is made for 5% resident vendor preference for the reason checked:**  
 Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; **or**,
- 5. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**  
 Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; **or**,
- 6. **Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**  
 Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

**Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.**

Bidder: \_\_\_\_\_ Signed: \_\_\_\_\_  
Date: \_\_\_\_\_ Title: \_\_\_\_\_

\*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

RFQ No. GSD116459

STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

**West Virginia Code §5A-3-10a states:** No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

**DEFINITIONS:**

“Debt” means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers’ compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

“Debtor” means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. “Political subdivision” means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. “Related party” means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

**EXCEPTION:** The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers’ compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (*West Virginia Code §61-5-3*), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

**WITNESS THE FOLLOWING SIGNATURE**

Vendor’s Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_, to-wit:

Taken, subscribed, and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission expires \_\_\_\_\_, 20\_\_.

**AFFIX SEAL HERE**

**NOTARY PUBLIC** \_\_\_\_\_