

**Recovery Act Buy American Requirements for Information Needed from
Financial Assistance Applicants/Recipients for Waiver Requests Based on
Unreasonable Cost or Nonavailability**

Applicants for and recipients of financial assistance funded by the Recovery Act must comply with the requirement 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 the head of the agency makes a waiver, or determination of inapplicability of the Buy American Recovery Act provisions, based on one of the authorized exceptions. The authorized exceptions are unreasonable cost, nonavailability, and in furtherance of the public interest. This document provides specific guidance on the unreasonable cost and nonavailability exceptions. This document does not cover requirements for the public interest exception because there are no statutory or regulatory standards for seeking or granting such a request. If an applicant or recipient wishes to request a waiver based on public interest, it is recommended that an assessment be conducted to determine whether one of the other exceptions apply. If the applicant or recipient is covered by a Trade Agreement [Appendix to Subpart B of 2 C.F.R. 176], and, under the applicable conditions of that Trade Agreement, the iron, steel, and/or manufactured goods are treated the same as American products, no waiver is needed to utilize those products.

Applicants and recipients who would like to request a waiver of the Buy American requirements for their project based on unreasonable cost or nonavailability should prepare their request in accordance with the instructions below. Requests for waivers based on unreasonable cost or nonavailability should be submitted to the DOE award official, who is the Contracting Officer. In order to identify the name of the responsible Contracting Officer, applicants should contact the Point of Contact for the Department listed in the Funding Opportunity Announcement (FOA). The Contracting Officer will determine whether to recommend approval of an application for a waiver to the head of the agency. Certain items have already been determined to be nonavailable on a class basis. They are listed at [48 C.F.R. 25.104\(a\)](#). If a request includes such items, the applicant should indicate which items are on this list in the request.

The information listed is required by guidance promulgated by the Office of Management and Budget (OMB), set forth at 2 C.F.R. Part 176, Subpart B. This list is for informational purposes only and does not need to be included as part of a waiver application. If an item on this list is not relevant to the request, applicants should explain the reason for this in the request.

General: This information is required for all requests for waivers of the Buy American requirements of the Recovery Act for financial assistance. [Section 1605 of the Recovery Act and 2 CFR [176.140\(c\)](#) & [160\(c\)](#)]

- Description of foreign and domestic construction materials—[See 2 CFR 176.140(c)(A) & .160(c)(A)]
- Unit of measure—[See 2 CFR 176.140(c)(B) & .160(c)(B)]
- Quantity—[See 2 CFR 176.140(c)(C) & .160(c)(C)]

- Cost—[See 2 CFR 176.140(c)(D) & .160(c)(D)]
- Price/Time of delivery or availability—[See 2 CFR 176.140(c)(E) & .160(c)(E)]
- Location of construction project—[See 2 CFR 176.140(c)(F) & .160(c)(F)]
- Name and address of proposed supplier—[See 2 CFR 176.140(c)(G) & .160(c)(G)]
- Detailed justification for the use of foreign construction materials—[See 2 CFR 176.140(c)(H) & .160(c)(H)]
- Assistance recipient made good faith effort to solicit bids for domestic construction materials/manufactured goods as demonstrated by language in requests for proposals, contracts, and communications w/prime contractor [Section 1605 of the Recovery Act]

Unreasonable Cost: This section lists categories of information required for waivers based on unreasonable cost of domestic construction materials or manufactured goods. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent. If an applicant is requesting a waiver based on unreasonable cost of domestic construction materials or manufactured goods, the request should include the following information. [See 2 CFR 176.140(b)(3)(i) & 176.140(d)]

If an item on this list is not relevant to the request, please explain the reason for this in the request.

- Price comparison worksheet
- Relevant excerpts from the bid documents used by the contractors to complete the price comparison worksheet
- Supporting documentation indicating the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers

Nonavailability: This section lists categories of information required for waivers based on nonavailability. Nonavailability means that the iron, steel, and/or manufactured good is not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. If an applicant is requesting a waiver based on nonavailability, the following documentation is necessary to demonstrate the available quantity and or quality of the material for which the waiver is requested. [See 2 CFR [176.80 \(a\)\(1\)](#) & [176.140\(b\)\(3\)\(ii\)](#)] If an item on this list is not relevant to the request, please explain the reason for this in the request.

- Supplier information or pricing information from a reputable supplier of domestic supplies indicating availability/delivery date for materials
- Documentation of assistance recipient's efforts to find available domestic sources such as a description of the process for identifying suppliers and a list of contacted suppliers
- Project schedule (timeline)

- Relevant excerpts from project plans, qualifications, and permits indicating the required quantity and quality of construction materials
- Statement from the prime contractor confirming the non-availability of domestic construction materials for which the waiver is sought

Late Requests:

Late requests are defined as requests submitted after the recipient obligates the Recovery Act funds. If the recipient submits a late request for a determination regarding the inapplicability of section 1605 of the Recovery Act (Buy American) after obligating Recovery Act funds (e.g. after the signing of a construction contract), the recipient must also include an explanation of why the request was submitted at that late date. Specifically, the recipient must explain why it could not request the determination before making the obligation or why the need for such determination was not reasonably foreseeable. If the late request is based on lack of reasonably foreseeable circumstances, the recipient should provide sufficient documentation to establish the circumstance were unforeseeable.