



**Department of Energy**  
Washington, DC 20585

**Computer Hardware and Software: Frequently Asked Questions**

**Scope:** This FAQ 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).

**Question:** Do the Recovery Act Buy American requirements (section 1605) apply to computer hardware and software, including server virtualization and energy efficiency software?

**Background:** Section 1605 of the Recovery Act requires that projects funded by the Recovery Act for the construction, alteration, maintenance, or repair of a public building or public work use American iron, steel, and manufactured goods in the project unless one of the specified exceptions applies, and a waiver is granted by DOE.<sup>1</sup>

According to the OMB Guidelines, a “manufactured good” is 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. For example, 2x4 lumber used to frame a structure or copper piping used to plumb a building and other types of manufactured goods that are permanently attached to or fixed to real property (fixtures) would be covered by the Buy American Recovery Act provisions.

**Software:** We do not see how computer software could be a manufactured good. It is neither processed into a specific form and shape nor combined with other raw material to create a material that has different properties than the properties of the individual raw materials. Server virtualization software and energy efficiency software are therefore not subject to the Recovery Act Buy American requirements.

**Hardware:** The question of whether computer hardware is covered by the Recovery Act Buy American provisions turns on whether computer hardware meets the Recovery Act definition of a *manufactured good*.<sup>2</sup> In order to determine whether computer hardware is a manufactured

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<sup>1</sup> For information about what constitutes the construction, alteration, maintenance, or repair of a public building or public work, see *Buy American Issues in the Recovery Act for Financial Assistance Agreements*. Available at <http://www.management.energy.gov/documents/ARRAGuideAttachment10v1.pdf>.

<sup>2</sup> The Recovery Act Buy American provisions only apply in projects for the construction, alteration, maintenance, or repair of a public building or public work. If the project in question is not for the construction, alteration,

good, you must determine whether the computer hardware was (i) brought to the construction site for incorporation into the building and (ii) whether it was 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.

Computer hardware products are normally processed into a specific form and shape and combined with other raw material to create a material that has different properties than the properties of the individual raw materials. A laptop or desktop computer, for example, has a molded plastic or metal case, and numerous individual components inside: a motherboard, hard drive, power supply, DVD drive, and so forth. As a result, the analysis of whether computer hardware can be “manufactured goods” for the purposes of Recovery Act, Section 1605 must focus on whether they are “brought to the construction site for incorporation into the building[.]”

Depending on the particular hardware and the individual project circumstances, computer equipment could be brought to the construction site for incorporation into the building. This determination depends on whether the computer hardware is permanently attached to or fixed to real property (fixtures). If so, the computer hardware would be covered by the Buy American Recovery Act provisions.

Cables and connections are examples of types of hardware equipment that could fall within the Buy American Recovery Act provisions because their installation makes them a permanent fixture in the building, similar to electrical wiring and outlets. Specific examples include fiber optic, Cat-5, or other cabling when installed inside walls, ceilings, or flooring; conduit when installed inside walls, ceilings, or flooring; and RJ-45 and other connectors when affixed to a wall or floor. Computer equipment that is built into the building, such as computer systems that are wired into the HVAC system or used to create a “smart building” could fall within the Buy American Recovery Act provisions under the same theory.

By contrast, personal computers, file servers, and networking hardware equipment are typically easily removable and not intended to be permanent fixtures. As such, these products are not covered by the Recovery Act Buy American provisions. Other examples of hardware components that likely are not covered by the Recovery Act Buy American provisions are: electronic data processing devices – including central processing units, routers and switches, laptops or notebook computers, personal digital assistants, hand-held computers, and wireless communication devices; peripheral input/output devices – including keyboards, printers, scanners, plotters, LCD monitors, and drives intended for removable media; related communications devices – including modems, cables, and connections; and storage media – including DVD media and USB or FireWire drives.

The determination of whether computer hardware is considered a manufactured good must be made by the grantee on a case-by-case basis using the analysis provided above.

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maintenance, or repair of a public building or public work, then the Buy American provisions will not apply and no further analysis is required.