



**Department of Energy**  
Washington, DC 20585

ASSISTANT SECRETARY OF ENERGY  
FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY

MEMORANDUM OF DECISION

**SUBJECT: Determination of inapplicability (limited waiver in the public interest) of section 1605 of the Recovery Act of 2009 (the Buy American provision) for the GE Jenbacher JMC 320 gas reciprocating engine being used in the Golden Triangle Regional Solid Waste Management Authority (GTR) landfill gas to energy project, funded in part under a sub-award (AR060-GT11-0111-0001) from the Mississippi State Energy Office, recipient of EECBG Award EE0000763.**

**This waiver applies only to this project, and no ARRA funds will be used towards the purchase of the GE Jenbacher JMC 320 gas reciprocating engine.**

Under the authority of the Recovery Act, section 1605(b)(1), the head of a Federal department or agency may issue a “determination of inapplicability” (a waiver of the Buy American provisions) if the application of section 1605 would be inconsistent with the public interest. On September 17, 2010, the Secretary of Energy re-delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy, for EERE Recovery Act projects.

Pursuant to this delegation, the Acting Assistant Secretary has determined that application of section 1605 restrictions would be inconsistent with the public interest for the project described herein.

Specifically, this public interest determination waives the Buy American requirements for the GE Jenbacher JMC 320 gas reciprocating engine being used in the landfill gas to energy project of the Golden Triangle Regional Solid Waste Management Authority (GTR). The landfill gas to energy project is funded, in part, by sub-award AR060-GT11-0111-0001 in the amount of \$310,000.00 from the Mississippi State Energy Office, recipient of EECBG Award EE0000763. This waiver applies only to this project.

In September of 2010, GTR entered into a Generation Partners Agreement (GPA) with the Tennessee Valley Authority (TVA) for a landfill gas to energy project. Generation Partners is a TVA renewable energy initiative that provides technical support and incentives for the installation of renewable generation facilities. This GPA pays GTR the retail price of local electricity plus \$0.03 per kilowatt-hour for renewable energy. This GPA was awarded as part of GTR's application under the TVA Green Power Partners Program. This GPA is extremely aggressive for this region of the United States, where renewable energy projects are generally negotiated at avoided cost levels. As part of the TVA Green Power Partners Program GPA contract, GTR is required to have the renewable energy system operational within 12-months of the signed GPA.

In October of 2010, pursuant to the GPA with TVA, GTR selected and contracted with Nixon Energy in to purchase a GE Jenbacher JMC 320 gas reciprocating engine for approximately \$870,000. The contract language signed between GTR and Nixon Energy states that cancellation of the contract would require GTR to pay the entire price of the contract to Nixon Energy.

GTR selected the bid submitted by Nixon Power on the Jenbacher unit based on bid specifications developed by the staff and consultants of the Authority, and subsequent to bids received on October 15, 2010. The specifications were developed with the requirements of TVA's Generation Partners Program fully considered. These requirements restrict the amount of electricity a generating facility participating in Generation Partners may place onto the electric grid to less than 1 Mega Watt (MW). Further, the staff and consulting engineers recommended to the Commissioners of the Authority to select a containerized unit to simplify the design, installation and operation of the generating facility. Due to these requirements, the specifications were developed, properly advertised and bids received.

There were two bids received for a generator. The Jenbacher unit met the specification requirements concerning the size (999kW) and by being a containerized unit. The other unit bid met the size requirements, but was not containerized and would require construction of additional facilities and much more in-depth construction activities. This would take additional time in the design and construction phases, and the possibility of completing the project before the Generation Partners' deadline was questionable.

GTA's further investigation revealed that of all the other generator sets available, none were bid due mainly to the size requirement. The next closest, and below 1 MW, unit found was approximately 815kW. This is almost 20% smaller than the Jenbacher and would not maximize the opportunity. The larger units – approximately 1.6 MW - are extremely oversized for this application and would operate very inefficiently at the 1 MW level and increase emissions of Greenhouse Gases. During this investigation, the sub-grantee was not able to locate another brand of generator set that met the size requirement and is factory containerized.

In December of 2010, the GTR landfill gas to energy project was targeted by the Mississippi Department of Environmental Quality and Mississippi Development Authority (MDA) as a potential project to fund with ARRA funds awarded under EERE EECBG Award EE0000763. On January 12<sup>th</sup>, 2011 a meeting was held, and the MDA determined that the GTR landfill gas to energy project was an appropriate use of award funds.

On January 28, 2011 the award recipient applied for a public interest waiver, to allow the use of the Austrian manufactured GE Jenbacher JMC 320 gas reciprocating engine.

EERE recognizes that there are US manufacturers of generator sets. Had GTR been identified as a potential grant recipient earlier in the procurement process, EERE would have worked with GTR to find a US manufactured generator set that met their needs. In a case where a grantee cannot identify a domestically manufactured good, EERE utilizes its internal experts and its MOU with NIST-MEP to communicate with potential manufacturers and facilitate discussions between grantees and domestic producers.

Section 1605 of the American Recovery and Reinvestment Act of 2009, (Pub. L. 111-5), prohibits use of recovery funds 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. This prohibition applies when any part of the project is paid for with Recovery Act funds.

The GE Jenbacher JMC 320 gas reciprocating engine is only one manufactured good being used in the GTR landfill gas to energy project. This project also includes an American manufactured treatment skid, valued at approximately \$470,000 dollars and the overall construction of the facility, valued at approximately \$700,000. All manufactured goods, iron and steel that will be used in the project, with the exception of the GE Jenbacher JMC 320 gas reciprocating engine, will remain subject to the Buy American Provisions of the Recovery Act. No ARRA funds will be used towards the purchase of the GE Jenbacher JMC 320 gas reciprocating engine.

EERE believes the public interest is best served by supporting projects that create or support jobs in the domestic manufacturing and construction industries while supporting a renewable energy infrastructure. The GTR landfill gas to energy project, with a total value of over \$2 million dollars, furthers both of these goals. Because no ARRA funds will be used towards the purchase of the GE Jenbacher JMC 320 gas reciprocating engine, all ARRA funds in the project (\$310,000) will be used in a manner consistent with the purposes of the Buy American provisions. In addition, another \$860,000 in non-Recovery Act dollars will also be subject to the Buy American provisions, creating and supporting jobs in the domestic manufacturing and construction industries. It is therefore in the public interest to issue a waiver of the Recovery Act Buy American provisions that allows this project to utilize Recovery Act award funds.

In light of the foregoing, and under the authority of section 1605(b)(1) of Public Law 111-5 and the Re-delegation Order dated September 17, 2010, with respect to Recovery

Act projects funded by EERE, the Acting Assistant Secretary hereby issues a “determination of inapplicability” (a waiver under the Recovery Act Buy American provisions) for a GE Jenbacher JMC 320 gas reciprocating engine to be used in the Golden Triangle Regional Solid Waste Management Authority (GTR) landfill gas to energy project, sub award AR060-GT11-0111-0001 from the Mississippi State Energy Office, EECBG Award Recipient EE0000763.

A handwritten signature in black ink that reads "Henry Kelly". The signature is written in a cursive style with a large initial "H" and a long, sweeping underline.

Henry Kelly  
Acting Assistant Secretary for Energy Efficiency and Renewable Energy  
U.S. Department of Energy