



RENEWABLE ENERGY CORPORATION

THE AMERICAN RECOVERY & REINVESTMENT ACT OF 2009

ARRA Overview

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- Since the inception of the American Recovery & Reinvestment Act of 2009 (ARRA), Public Law 111-5, there has been some concern surrounding the eligibility of photovoltaic modules which are manufactured outside the United States.
- Under specific conditions the Free Trade Agreement (FTA) waiver of the Buy American Act (BAA) clause qualifies the REC Peak Energy Modules for ARRA funding.

So what does this mean – and how do we get our projects qualified for ARRA funding?

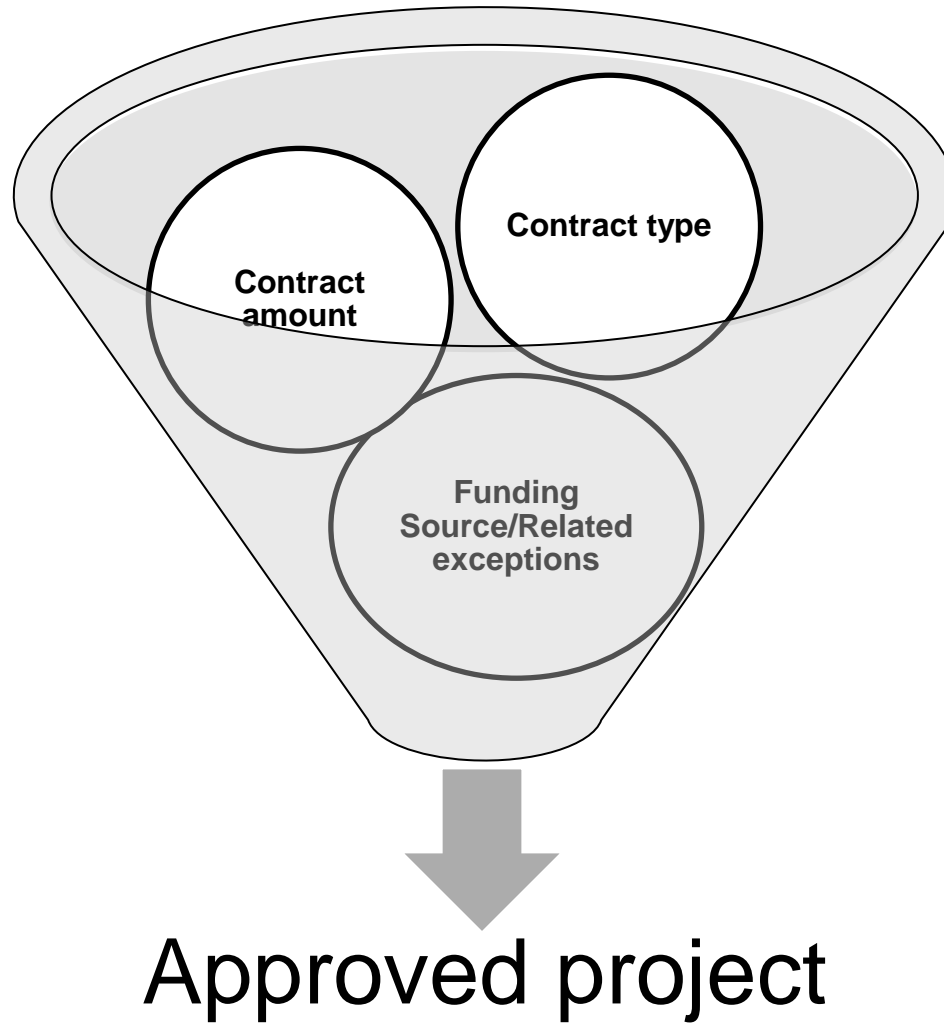
- Not all projects will qualify – but we believe that all ARRA funded projects should go through a review to determine if REC Peak Energy can be specified
- The following is a discussion of ARRA and the factors/step that determine qualification.

Steps that qualify REC for use on BAA projects



- When the Free Trade Agreement waiver applies, the contractor may provide construction materials (*i.e.*, an “eligible product”) that were manufactured, or *substantially transformed*, in a “designated country”.
- “Eligible product” is a product manufactured in a “designated country” and is defined as a foreign end product, construction material, or service that, due to applicability of a trade agreement to a particular acquisition, is not subject to discriminatory treatment.
- the US has a valid FTA with Singapore (a “designated country”) which qualify the Peak Energy Series Modules for use in BAA projects.

So - How do we get one of these FTA waivers?



FTA Exemption Factors



The Buy American Act (BAA) exemption clause in the ARRA depends on many factors

ARRA compliance for the Peak Energy Series Modules is based on three main factors;

1. Funding Source

- Recovery Act Grant (Recovery Act grant funding is typically routed through a state)
- Federal Procurement (Federal Customer using Recovery Act Funding)

2. Contract amount

- the prime contract levels where the Trade Agreements Act pre-empts BAA,

3. Contract Type

- Supply contract - Materials purchased directly by the government
- Construction Materials - an article, material, or supply brought to the construction site by the contractor or Subcontractor for incorporation into the building or work

Funding Source



- Identifying the source of funding for the construction project may not always be evident from the solicitation documents, the fund cite or known to the buyer or contracting officer. The sales team should always confirm if there is any doubt. This is especially important for contracts or grants funded by the Recovery Act.
- Recovery Act requirements apply to any construction project that use funds appropriated or otherwise provided by the Act.

Contract Type and Values



- The TAA waiver of the BAA applies to supply and construction contracts that exceed a specified value.
- Supply contract definition - Materials purchased directly by the government
- Supply Contracts dollar threshold - \$70,079.
- Construction Materials definition - an article, material, or supply brought to the construction site by the contractor or Subcontractor for incorporation into the building or work. When a construction contract is estimated to exceed the TAA thresholds, REC can supply construction material and components thereof from any designated country.
- Construction Contracts dollar thresholds - \$7.8 million.
 - if the estimated value of the construction is more than \$7,804,000 million, the BAA is waived and the TAA procurement procedures apply.

- Interpretation of these guidelines varies from agency to agency, state to state, and is dependent on a variety of criteria.
- Not every State acceded to the international obligations. Alabama, Alaska and Ohio have no obligation to honor the various trade agreements. Some States list significant exclusions (e.g., Arkansas, Tennessee and Oklahoma exclude construction services).
- The contract officer should be aware of any of these exceptions

Ultimately the purchasing officer has the right to follow or ignore any of these guidelines

FTA Waiver Flow Chart

1. Identify Contract type

SUPPLY

CONSTRUCTION
MATERIALS

2. Identify Contract Amount

Is contract greater than:

\$70,079

\$7.8 Million

If “no” then project does not qualify

3. Are there any Exceptions?

- State exceptions to FTA
- Local manuf of product
- Contract officer preference
 - Incumbent product

4. If the contract amount is met for the specified contract and there are no local/state exceptions the project can be approved for a FTA Waiver and qualify for ARRA funds

Questions or Comments



→ Please be in touch with:

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Backup info – FARs - Definitions



The applicable FARs

- For U.S. government construction contracts, the responsibilities and obligations of the Buy American Act and the Trade Agreements Act are imposed by four contract clauses

- For the Buy American Act,
 - the clauses are: FAR [52.225-9](#), Buy American Act – Construction Materials (FEB 2009) and
 - FAR [52.225-10](#), Notice of Buy American Act Requirement – Construction (FEB 2009) if the solicitation contains FAR [52.225-9](#).

- For the Trade Agreements Act, the clauses are:
 - FAR [52.225-11](#), Buy American Act—Construction Materials under Trade Agreements (AUG 2009) and
 - FAR [52.225-12](#), Notice of Buy American Act Requirement—Construction Materials under Trade Agreements (FEB 2009) if the solicitation contains FAR [52.225-11](#).

- Most contracting officers include all four clauses in their solicitations.

The applicable FARs



- For the Recovery Act, the applicable clauses are:
 - FAR 52.225-21, Required Use of American Iron, Steel, and Other Manufactured Goods – Buy American Act – Construction Materials (MAR 2009);
 - FAR 52.225-22, Notice of Required Use of American Iron, Steel, and Other Manufactured Goods – Buy American Act – Construction Materials (MAR 2009);
 - FAR 52.225-23, Required Use of American Iron, Steel, and Other Manufactured Goods – Buy American Act – Construction Materials Under Trade Agreements (Aug 2009);
 - FAR 52.225-24, Notice of Required Use of American Iron, Steel, and Other Manufactured Goods – Buy American Act – Construction Materials Under Trade Agreements (Mar 2009).

- “*Construction material*” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies.
- *Domestic construction material*” means –
 - (1) An unmanufactured construction material mined or produced in the United States;
 - (2) A construction material manufactured in the United States, if –
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
 - (ii) The construction material is a COTS item.

- “*Commercially available off-the-shelf (COTS) item*” –
 - (1) Means any item of supply (including construction material) that is –
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR [2.101](#));
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace and
 - (2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), such as agricultural products and petroleum products.
-
- designated country
 - There are four categories of “designated countries.”
 - *World Trade Organization Government Procurement Agreement*
 - *Free Trade Agreement*
 - *least developed country*
 - *Caribbean Basin country*
 - Singapore (where REC modules are manufactured) is a *World Trade Organization Government Procurement Agreement country*