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June 18, 2010

GENERAL MEMORANDUM 10-076

IHS Issues Limited Buy American Act Waiver for Sanitation Facilities Construction Funded Through the Recovery Act

The Indian Health Service (IHS) has issued a limited waiver of the requirement in Section 1605 of the American Recovery and Reinvestment Act (PL 111-5, Recovery Act) that all construction project materials funded by the Recovery Act be manufactured in the United States.

The waiver applies to the incidental components of IHS sanitation facilities construction funded under the Recovery Act. The Recovery Act appropriated \$68 million for IHS sanitation facilities construction. The IHS describes what it means by the term "incidental" in the attached June 15, 2010, FEDERAL REGISTER notice.

Every sanitation facilities construction project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and incorporated into the physical structure of the project, such as nails, nuts, bolts, other fasteners, tubing, gaskets, etc. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, characterize them as incidental to the facility or projects.

The materials to which the waiver applies cannot comprise more than *five percent of the total cost* of the components used or incorporated into a project funded in whole or in part by the Recovery Act. The IHS notes that recipients who wish to use this waiver need to be in communication with their contractors to determine the items to be covered by the waiver and also that there must be appropriate documentation.

The waiver issued by the IHS is consistent with a waiver issued by the Environmental Protection Agency in 2009 with regard to its water and waste disposal facilities funded through the Recovery Act.

Please let us know if we may provide additional information or assistance regarding this waiver issued by the Indian Health Service.

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Inquires may be directed to:
Karen Funk (kfunk@hobbsstrauss.com)

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Pathogenic Mechanisms in UTI.

Date: July 7, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7799, ls38z@nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Planning Grant for Ulcerative Colitis Trial in Children.

Date: July 14, 2010.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-7637, davila-bloomm@extra.nidk.nih.gov.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Inflammatory Bowel Disease Consortium Ancillary Study.

Date: July 19, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-3993, tatham@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 9, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-14340 Filed 6-14-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; VSL—SEP Review.

Date: June 14, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, PhD, Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301-496-8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: June 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010-14349 Filed 6-14-10; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Nationwide Limited Public Interest Waiver of Section 1605 (Buy American Requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) For De Minimis Incidental Components of Sanitation Facilities Construction Projects Financed With Funds Provided Under ARRA

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: The Indian Health Service (IHS) hereby gives notice of granting a nationwide limited waiver of the Buy American requirements of the American Recovery and Reinvestment Act of 2009 (ARRA) Section 1605 under the authority of Section 1605(b)(1) (public interest waiver) for de minimis incidental components of sanitation facilities construction projects funded by ARRA. This action permits the use of non-domestic iron, steel, and manufactured goods when they occur in de minimis incidental components of projects funded by ARRA that may otherwise be prohibited under section 1605(a). As used in this Notice, “de minimis incidental components” means those components otherwise prohibited under Section 1605(a) that cumulatively comprise no more than a total of 5 percent of the total of the materials used in a project funded in whole or in part with ARRA assistance.

DATES: *Effective Date:* Upon signature.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c) and Section 176.80 of the rules of the Office of Management and Budget (OMB) (2 CFR 176.80), the IHS hereby provides notice that it is granting a nationwide limited waiver of the requirements of section 1605(a) of Public Law 111-5, Buy American requirements, based on the public interest authority of section 1605(b)(1), to allow the use of non-domestic iron, steel, and manufactured goods when they occur in de minimis incidental components of eligible sanitation facilities construction projects, where such components cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into a project funded in whole or in part by ARRA.

ARRA 1605(a) prohibits the use of recovery funds 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, or unless a waiver is granted by the head of the Federal department or agency. ARRA 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality; or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. ARRA 1605(c) provides that if the head of a Federal department or agency makes a determination under 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**. The finding relevant to this waiver is at ARRA 1605(b)(1), that applying the Buy American requirement would be inconsistent with the public interest.

The IHS's sanitation facilities construction projects typically contain a relatively small number of high-cost components incorporated into the project that are iron, steel, and manufactured goods, such as pipe, tanks, pumps, motors, instrumentation, control equipment, treatment process equipment, and relevant materials to build structures for treatment plants, pumping stations, pipe networks, etc. In bid solicitations for a project, these high cost components are generally described in detail via project specific technical specifications. For these major components, Tribes, utility owners and their contractors are generally familiar with the conditions of availability, the potential alternatives for each detailed specification, the approximate cost, and the country of manufacture of the available components.

Every sanitation facilities construction project also involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and incorporated into the physical structure of the project, such as nails, nuts, bolts, other fasteners, tubing, gaskets, etc. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, characterize

them as incidental to the facility or project.

In drafting this waiver, because the majority of IHS sanitation facilities construction projects occur in remote locations, IHS considered the fact that these types of incidental components are obtained by contractors in many different ways from many different sources, and the disproportionate cost and delay that would be imposed on projects if the IHS did not issue this waiver. Such delays would jeopardize project completion and related jobs in remote areas including Alaska villages where the only means of transporting such components is by air.

Due to the diverse characteristics of the specific configurations of these individually low-cost components, the analysis and consideration of waiver requests for them—and particularly of ascertaining whether U.S.-made products exist or can be made to meet these diverse configurations—have been a demanding and time consuming task far out of proportion to the percentage of total project materials cost they comprise. Further, since the specific use of these low-cost components can be expected to be widely varied, formulating categorical waivers for specific types of components would be impractical. Recipients who do not have their compliance with respect to section 1605 clarified may in many cases be unable to initiate or continue constructing their projects resulting in the loss of jobs that were a result of the project. Because the situations described above can be effectively addressed by a comprehensive application of a nationwide de minimis waiver, the IHS finds that it would be inconsistent with the public interest to apply the Buy American requirement to incidental components when they in total comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project.

For many years, the IHS and the Environmental Protection Agency's (EPA) Clean Water Act Indian Set Aside and Drinking Water Infrastructure Grants-Tribal Set Aside programs jointly funded water infrastructure projects. The EPA undertook inquiries to identify the approximate scope of incidental components within its water infrastructure projects. The responses were consistent and indicated that the percentage of total costs for drinking water or wastewater treatment infrastructure projects represented by these incidental components is generally not in excess of 5 percent of the total costs of the materials used in and incorporated into a project.

As a result of its research and analysis, EPA published two **Federal Register** notices of de minimis waivers. The first was published on Tuesday, June 2, 2009 (FR Vol. 74, No. 104, pp. 26398 and 26399), and set forth the EPA's determination with respect to a public interest finding on de minimis. The second notice, which revised the first, was published on Monday, August 10, 2009 (FR Vol. 74, No. 152, pp. 39959 and 39960). By these waivers the EPA has also determined that imposing ARRA's Buy American requirements for the category of de minimis incidental components is not in the public interest.

While the authorizing statutes and funding sources for the EPA and IHS recipients are different, the types of projects that EPA finances under its programs are substantially similar in size, scope and purpose as those funded by the IHS and, as stated above, some projects are jointly funded by the IHS and the EPA. The IHS has decades of experience in constructing water and waste disposal facilities in rural Indian country and shares the EPA's rationale with respect to incidental components used in similar projects. With respect to jointly-funded projects, it is desirable to avoid disparate treatment of components based on whether or not ARRA funds come from the EPA or the IHS. Section 1605 should be administered consistently, both within a particular Federal agency and, to the extent possible, between agencies. Promoting consistent treatment and avoiding unnecessary delays in committing ARRA financing to projects around the country are crucial to the success of ARRA. Requiring individual waivers for incidental components would be time prohibitive and overly burdensome for applicants and the IHS. Therefore, a de minimis waiver of incidental components totaling no more than 5 percent of the total cost of the materials used in and incorporated into a project is in the public interest.

Based on the public interest finding discussed above and pursuant to Section 1605(c), the IHS has found that it would be inconsistent with the public interest—and particularly with ARRA's directives to ensure expeditious construction consistent with prudent management, as cited above—to apply the Buy American requirement to incidental components when they in total comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project. Accordingly, IHS is hereby issuing a national waiver from the requirements of ARRA Section 1605(a) for any components described above as incidental that comprise in total a de

minimis amount of the project, that is, for any such incidental components up to a limit of no more than 5 percent of the total cost of the materials used in and incorporated into a project.

Recipients who wish to use this waiver should in consultation with their contractors determine the items to be covered by this waiver. They must retain relevant documentation as to those items in their project files, including the types and/or categories of items to which this waiver is applied, the total cost of incidental components covered by the waiver for each type or category, and the calculations by which they determined the total cost of materials used in and incorporated into the project.

In using this waiver, recipients should consider that all sanitation facilities construction projects by definition require the expenditure of a certain amount of project funds on the literal “nuts and bolts”-type components whose origins cannot readily be identified prior to procurement. The IHS has determined the 5 percent limit based on the previously mentioned EPA inquiries, its 50-year experience constructing sanitation facilities for American Indian and Alaska Native communities, and informed professional engineering judgment as to the maximum total amount of incidental goods used in most sanitation facilities construction projects. In a few, exceptional cases, recipients using this waiver may have multiple types of low-cost components which, when combined and in conjunction with those literal “nuts and bolts”-type components, may total more than 5 percent. Recipients in such cases will have to choose which of these incidental components will be covered by the waiver and which will not, and will document the type and amount of such items covered. Components which the recipient is unable to include within the 5 percent limit of this waiver must comply with the requirements of section 1605 by appropriate means other than coverage under this waiver.

Further, as described above, in some cases projects are jointly funded by IHS and the EPA. Both the IHS and the EPA have issued de minimis waivers that have a cap of a total of 5 percent of the total cost of the materials used in and incorporated into a project. In the case of a jointly funded project, these waivers shall not be combined to create a waiver of greater than 5 percent of total project costs.

This supplementary information constitutes the “detailed written justification” required by Section 1605(c) of ARRA and Section 176.80 of

OMB’s rules for waivers of the Buy American provisions.

Authority: Public Law 111–5, Section 1605.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Gould, Regulations Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852–1627; call non-toll free (301) 443–7899; send via facsimile to (301) 443–9879; or send your e-mail requests, comments, and return address to: Betty.Gould@ihs.gov.

Dated: June 9, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–14347 Filed 6–14–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0020]

Debris Contracting Guidance, RP 9580.201

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on Recovery Fact Sheet RP9580.201 *Debris Contracting Guidance*.

DATES: Comments must be received by July 15, 2010.

ADDRESSES: Comments must be identified by docket ID FEMA–2010–0020 and may be submitted by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Please note that this proposed policy is not a rulemaking and the Federal Rulemaking Portal is being utilized only as a mechanism for receiving comments.

Mail: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Byron Mason, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, 202–646–4368.

SUPPLEMENTARY INFORMATION

I. Public Participation

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method

used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the “Privacy Notice” link in the footer of www.regulations.gov.

You may submit your comments and material by the methods specified in the **ADDRESSES** section above. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

Docket: The proposed fact sheet is available in docket ID FEMA–2010–0020. For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov> and search for the docket ID. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

II. Background

This fact sheet assists Public Assistance applicants with meeting procurement requirements set forth in 44 CFR Part 13, as well as other eligibility requirements, when procuring debris removal and monitoring contracts.

FEMA seeks comment on the proposed fact sheet, which is available online at <http://www.regulations.gov> in docket ID FEMA–2010–0020. Based on the comments received, FEMA may make appropriate revisions to the proposed policy. Although FEMA will consider any comments received in the drafting of the final policy, FEMA will not provide a response to comments document. When or if FEMA issues a final policy, FEMA will publish a notice of availability in the **Federal Register** and make the final policy available at <http://www.regulations.gov>.

Authority: 42 U.S.C. 5121–5207; 44 CFR parts 13 and 206.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–14289 Filed 6–14–10; 8:45 am]

BILLING CODE 9111–23–P