

Section 1605(a) of the Recovery Act, the Buy American provision, states that none of the funds appropriated by the Act “may be used 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.”

Subsections 1605(b) and (c) of the Recovery Act authorize the head of a Federal department or agency to waive the Buy American provision if the head of the agency finds that: (1) Applying the provision would be inconsistent with the public interest; (2) the relevant goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of the goods produced in the United States will increase the cost of the project by more than 25 percent. If the head of the Federal department or agency waives the Buy American provision, then the head of the department or agency is required to publish a detailed justification in the **Federal Register**. Finally, section 1605(d) of the Recovery Act states that the Buy American provision must be applied in a manner consistent with the United States’ obligations under international agreements.

II. Finding That Individual Exemptions for Incidental Items Are Not in the Public Interest

Recovery Act projects funded by the Academic Research Infrastructure—Recovery and Reinvestment Program (ARI) typically involve the use of literally thousands of miscellaneous, generally low-cost items that are essential for, but incidental to, the construction, alteration, maintenance or repair of a public building or public work and are incorporated into the physical structure of the project, such as nuts, bolts, wires, cables, and switches. For many of these incidental items, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable in the normal course of business. More importantly, the miscellaneous character of these items, together with their low cost (both individually and when procured in bulk), characterize them as incidental to the project.

Requiring individual waivers for incidental items would be time prohibitive and overly burdensome for both awardees and for the National Science Foundation (NSF) in carrying out the Recovery Act. Therefore, a nationwide limited de minimis waiver of incidental items up to a limit of no more than 5 percent of the total cost of

the iron, steel, and manufactured goods used in and incorporated into a project is justified in the public interest.

Issuance of this limited project-specific exemption recognizes NSF’s commitment to expeditious expenditure of Recovery Act dollars, by balancing the need for expeditious and efficient implementation of the Recovery Act while still applying the Buy American provisions for materials that are greater than a de minimis part of the projects.

With a similar purpose, on July 26, 2011, NSF published a de minimis exemption from the Buy American requirement for incidental items in a ship construction project [76 FR 44613].

III. Exemption

On July, 20, 2011, and under the authority of section 1605(b)(1) of the Public Law 111n5 and delegation order dated 27 May 2010, with respect to the Academic Research Infrastructure—Recovery and Reinvestment Program awards funded by NSF, the NSF Chief Financial Officer granted a limited exemption (a waiver under the Recovery Act Buy American provisions) for incidental items that comprise, in total, a de minimis amount of the project; that is, any such incidental items up to a limit of no more than 5 percent of the total cost of the iron, steel, and manufactured goods used in and incorporated into a project that is funded under the Academic Research Infrastructure—Recovery and Reinvestment Program.

Other Federal agencies have issued similar de minimis exemptions. For example, the Department of Energy issued a de minimis exemption relating to its Office of Energy Efficiency and Renewable Energy [75 FR 35447 (June 22, 2010)].

Dated: November 14, 2011.

Lawrence Rudolph,
General Counsel.

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NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board’s Committee on Programs and Plans (CPP) Task Force on Unsolicited Mid-Scale Research (MS), pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of

National Science Board business and other matters specified, as follows:

DATE AND TIME: November 29, 2011; 4 p.m.–5 p.m. EST.

SUBJECT MATTER: (1) Discussion of the proposed revision to the Task Force on Unsolicited Mid-Scale Research (MS) Task Force Charge timeline; (2) Discussion of the revised MS Task Force report outline; (3) Discussion of NSF mid-scale award data analysis.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office [call (703) 292–7000 or send an email message to nationalsciencebrd@nsf.gov] at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor’s badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor’s badge.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site <http://www.nsf.gov/nsb> for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at <http://www.nsf.gov/nsb/notices/>. Point of contact for this meeting is: Matthew B. Wilson, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

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NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board’s Task Force on Merit Review, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business, as follows:

DATE AND TIME: Monday, November 28, 2011, from 1 to 2 p.m., EST.

SUBJECT MATTER: Discussion of the draft Merit Review Criteria report.

STATUS: Open.