



THE VICE PRESIDENT

WASHINGTON

July 15, 2010

The Honorable Mark H. Schauer
House of Representatives
Washington, D.C. 20515

Dear Congressman Schauer:

Thank you for your letter of June 22, 2010. The concerns that you have shared with me regarding implementation of the Buy American provisions of the American Recovery and Reinvestment Act (Recovery Act) are something I take very seriously. I have instructed both the Department of Energy and the Office of Management and Budget to address the concerns you raised and the more general issues of enforcing the Buy American provisions.

Specifically, the Department of Energy has done the following:

- The Department's General Counsel has sent letters of inquiry to the companies identified in Full Spectrum Solution's submission asking them to submit documentation confirming that the products in question were manufactured in the United States. The companies were given one week to respond and the responses are now being reviewed.
- The Department also sent a "Program Alert" (attached) to all grantees reminding them of their responsibilities under the Buy American provisions of the Recovery Act with links to detailed guidance documents.
- In the event that the Department's General Counsel has reason to believe that a company identified in Full Spectrum Solution's submission has misrepresented the origins of its products, the Department will both inform all of its Recovery Act grantees that the company's products do not appear to be eligible for purchase under grants subject to the Buy American provisions of the Recovery Act and refer the matters to appropriate enforcement authorities for investigation and enforcement action.
- A Buy American complaints "hotline" function has been added to the Department's website on the General Counsel's office page, at <http://www.gc.energy.gov/>, and on the Energy Efficiency & Renewable Energy Recovery Act home page, at http://www1.eere.energy.gov/recovery/buy_american_provision.html.

Thus the Department of Energy has created a “one-stop” mechanism for businesses to report Buy American violations under the Recovery Act. The Department will receive complaints, conduct preliminary investigations, inform grantees and enforcement authorities as appropriate of possible violations, and assist grantees and legitimate domestic manufacturers to track the complaints and responses from enforcement agencies.

To assist agencies other than the Department of Energy to initiate similar actions, I have asked the General Counsel of the Office of Management and Budget to determine what guidance should be provided to all agencies in regard to investigation of possible violations of the Buy American terms and conditions of Recovery Act grants.

Vigilance in enforcing all of the provisions of the Recovery Act is critical to maintaining the support of the American people in our efforts to address the effects of the most severe recession in several generations. I appreciate your help in addressing this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Biden", written in a cursive style.

Joseph R. Biden, Jr.

Enclosure: Department of Energy “Program Alert”

EERE Program Notice: Recovery Act Buy American Provisions and Potentially Misleading Manufacturer Claims

EERE is issuing this Program Notice as an informational bulletin to financial assistance recipients ("grantees") to aid their compliance with the Recovery Act Buy American provisions. Please note that EERE has recently issued guidance to assist grantees in documenting compliance and to determine where a product is manufactured; these documents are available on the EERE Buy American Website, at: http://www1.eere.energy.gov/recovery/buy_american_provision.html.

EERE has received a series of complaints from domestic manufacturers alleging that foreign competitors are fraudulently marketing their products as compliant with the Recovery Act Buy American provision. EERE reminds grantees that it is their responsibility to ensure that, for Recovery Act-funded projects, all iron, steel, and manufactured goods incorporated into a public building or public work are manufactured or produced in the United States.

The allegations of fraudulent claims have been predominantly in the high-efficiency lighting sector, particularly induction and LED products. As a result, grantees pursuing lighting retrofit projects should be vigilant in their interactions with lighting product suppliers, distributors, and manufacturers. EERE and DOE General Counsel are taking measures to increase vigilance on our end, and will make a reporting hotline available on the EERE Buy American website to enable grantees or domestic manufacturers to report concerns about improper identification as domestically manufactured goods.

The grantee will need to verify that the products in question are actually manufactured or produced in the United States. Grantees are responsible for ensuring that the products they purchase fully comply with the Buy American requirements, and must be able to sufficiently document that compliance for purposes of post-award monitoring and audits, as outlined in the Guidance on Documenting Compliance with the Recovery Act Buy American Provisions (http://eere.energy.gov/recovery/pdfs/eere_buy_american_documentation_guidance.pdf).

In addition to allegations of fraud, EERE research has discovered several company websites promoting their products' compliance with the Buy American requirements, apparently on the basis of being manufactured in a "Trade Agreement" country. This can be confusing, because not all grantees can treat "Trade Agreement" country goods as U.S. goods and are only eligible to invoke the U.S.'s obligations under its trade agreements for projects valued at or above \$7,804,000. For additional information, please see the EERE FAQ entitled "International Trade Agreements and the Recovery Act Buy American Provisions" (http://eere.energy.gov/recovery/pdfs/faq_international_trade_agreements_and_buy_american_provisions.pdf).

EERE would also like to use this Program Notice to publicize an effort by the National Electrical Manufacturers Association ("NEMA") to identify domestic induction and LED lighting manufacturers, and compile a list of domestic producers for lighting items in high demand by EERE grantees. EERE hopes that this information will be available from NEMA within the next two weeks. Once it is available, a link to this information will be posted on the Buy American website. (http://eere.energy.gov/recovery/buy_american_provision.html)