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Buy America Act, Buy American Act, Davis-Bacon Act Compliance

Country of Origin: Designed by Differential Energy Global Ltd. in Port Orchard, WA and greater than 50% is manufactured and 100% is assembled in the USA.

Exceeds Substantial Transformation Test: Transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article.

Buy American Act Compliant: This product is a COTS item manufactured in the United States, and is compliant with the Buy American Act.

Recovery Act (ARRA) Compliant: This product complies with the 52.225-21 "Required Use of American Iron, Steel, and Manufactured Goods-- Buy American Act-- Construction Materials (October 2010).

Trade Agreements Act Compliant: This product is a COTS item manufactured in the United States, and is compliant with the Trade Agreements Act.

GSA Schedule: Suitable in accordance with FAR Subpart 25.4 (*however, DEG does not have a GSA contract but its products have been specified by the GSA – [LPOE Project for lighting retrofit between U.S.-Canadian Border]*).

<http://www.wingovernmentcontracts.com/buy-american-act.htm>

<http://www.mcknightandkennedy.com/industry-info/trade-agreements-act.html>

Davis-Bacon Act

- 4) Is the manufacturing or furnishing of materials, articles, supplies or equipment covered under the Davis-Bacon Act?

The requirements of the Davis-Bacon Act apply to construction, alteration, and/or repair (including painting or decorating) of public buildings or public works. Only when the manufacturing or furnishing of materials, articles, supplies or equipment is conducted in connection with and at the "site of the work" called for in the contract, are those activities covered under the Davis-Bacon Act.

[29 CFR 5.2\(i\)](#)

All of DEG's LED lamps meet the requirements established for the various "Buy" Acts and is not subject to the Davis-Bacon Act as no "manufacturing" is performed "on-site" as defined in 29 CFR 5.2 (i) and other sections of the Davis-Bacon Act.

Regards,

Richard A. Flaherty

Richard A. Flaherty
President & CEO

See Supporting Documentation on Pages 2 and 3 Attached



THE
**AMERICAN RECOVERY
AND REINVESTMENT ACT**
BUY AMERICAN DEFINITIONS

Outlined in this page is a summary of vital government legislation, as well as an attempted explanation of the process revolving around the acquisition of government contracts.

Buy American Act (1933)

Passed in 1933 by Congress, the BAA required the U.S. government to prefer U.S. made products in its purchases. In certain government procurements, the requirement purchase must be waived if the domestic products is more expensive than an identical foreign-sourced product by a certain percentage, if the products are not available domestically in sufficient quantity or quality, or if doing so is in the public interest.

Effects of American Recovery and Reinvestment Act (ARRA) on Buy American (2009)

Upon its passage in 2009, the ARRA has its own unique Buy American requirements. These changes directly affect the spending of money on "construction materials" and "manufactured goods" in Federal government contracts. It is within the scope of these changes that recent confusion has arisen. In addition, there are no restrictions on the value of components and their country of origin, nor any restrictions on the country or origin of the steel used in making fixtures.

Federal Acquisition Regulation (FAR)

FAR refers to the principal set of rules in the Federal Acquisition Regulation System. This system consists of sets of regulations issued by agencies of the Federal government of the United States to govern the process through which the government purchases goods and services. Within the ARRA, there is a specific section; Section 1605 entitled "Buy American," which introduces specific clauses affecting Federal government contracts. Depending on their location of manufacture, products qualify for different requirements.

Specifically stated in Section 1605 of the ARRA, the use of stimulus funds for any project used manufactured goods that AREN'T produced in the U.S. is forbidden. There are three specific "levels" upon which different requirements are given to products based on their origin of manufacture.

How To Measure Compliance

In order to measure whether or not products are in compliance with both the BAA and FAR trade regulations, one must perform the basic tests.

1) Cost of Component > 50% Test

Firstly, you need to determine if the products are to be classed as a part/component of a greater unit, if so does the component comprise less than 49% of the cost of the unit, OR are the products classed as a unit unto themselves, for which no percentage determination can be applied.

- IF the products are a part/component of a greater unit/component, and the cost (imported to your location) is less than 49% of the total COST, then they will qualify.
- IF it is a stand alone component, it will not qualify, unless an exception is applied for and granted by the contracting authority, due to the domestic unavailability and requirement of the fittings to satisfy the contractual obligations.

Any items produced under NAFTA, Trade Agreements Act or, designated country status, comply with BAA. Currently, one of our manufacturing countries, China, does not enjoy any of those protections. However, if the part fails the BAA tests, but is integral to the performance of the system, AND the part is not available from any protected country, or the U.S., then an exemption can be applied for and is granted so long as you can prove that sole source is the only option available.

2) Substantial Transformation Test

Transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article.

EPA has suggested that the substantial transformation test provides “guidance” on the issue; rooted in well-established legal interpretations.

It is important to be knowledgeable of the criteria that DO NOT qualify as substantially transformed. These include, but are not limited to:

- The addition of batteries to devices
- Fitting together a small number of components by bolting, gluing, soldering, etc.
- Repacking or packaging components together
- Diluting chemicals with inert ingredients to bring them to standard degrees of strength

Assembly operations which are minimal or simple, as opposed to complex or meaningful will generally not result in a substantial transformation. Additionally, cosmetic or surface changes, such as painting, lacquering, or cleaning do not count as well. Finally, simply cutting a material to specific lengths or widths are also not considered to be “substantial transformations.”

Appropriate exemptions, when taken in the context of the aforementioned process, include:

- The cost of domestic products is unreasonable
 - They will increase the overall cost of the contract by 25% or more
 - Products exceed the cost of foreign material by 6% or more
- The construction material to manufacture the products isn’t harvested in the U.S. in available and reasonable commercial quantities.
- Using domestic products is inconsistent with public interest.

Question and Answer



- Q: Are LED streetlights a “supply item”, and thus exempt from “Buy American” requirements?
- A: No. The concept of a “supply item” has no relevance in the context of section 1605 of the Recovery Act.
- Q: What are the requirements that may be imposed on products produced or assembled domestically using off-shore components?
- A: There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States.