



Federal Aviation Administration

Memorandum

Date:

From: Russell H. Blasing, Program Director, Office of Acquisition Services, AMQ-1

RHB

To: Lindy Ritz, Director, Aeronautical Center, AMC-1

Prepared by: Chris Lowmiller, Contracting Officer, AMQ-240

Subject: Request for Waiver, Buy American Requirements

The attached request for waiver of Buy American requirements for purchase of an engine generator set for the Atlanta Air Traffic Control Tower is forwarded for your approval. The request, along with supporting documentation, is forwarded for your approval pursuant to AMS T3.6.4.A.3.c., which delegates authority to waive application of the FAA Buy American to the Center Director.

Attachment:
Waiver Package

Approved: _____

Lindy Ritz

Disapproved: _____

Date: ~~MAY 1 2009~~ MAY 8 2009

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION (FAA)
MIKE MONRONEY AERONAUTICAL CENTER

REQUEST FOR WAIVER
BUY AMERICAN REQUIREMENTS

The American Recovery and Reinvestment Act, (Recovery Act), authorizes additional Facilities and Equipment (F&E) funding for improvements to power systems, air route traffic control centers, air traffic control towers, terminal radar approach control facilities, and navigation landing equipment. The FAA has identified priority F&E projects within these areas. One of these requirements is the purchase of a 750kW engine generator (E/G) and related equipment for the Atlanta Air Traffic Control Tower (ATCT). The estimated amount of the requirement is \$149,111 including an estimated amount for freight and delivery and offloading.

In accordance with AMS guidance T.3.17, American Recovery and Reinvestment Act (Revision 1, April 2009), awards funded with Recovery Act funds, including issuance of delivery order(s) against an existing contract, must include AMS Clause 3.6.4-18, "Certification Regarding Steel and Manufactured Products." For F&E funded projects such as the Atlanta ATCT, the Recovery Act special Buy American provisions do not apply. However, the purchase must be in compliance with 49 USC Sec. 50101, Buy American Preferences. AMS toolbox T3.6.4, Foreign Acquisition (Revision 6, October 2007), implements the Buy American provisions, wherein notwithstanding any other provision of law, the Contracting Officer will not obligate any funds authorized to be appropriated for any project unless steel and manufactured products used in such projects are produced in the United States. Pursuant to T3.6.4.A.3.c., the Administrator has delegated all authority under subparagraph T3.6.4.A.3.a. to the heads of contracting activities (i.e., Director of Acquisition Policy and Contracting, Regional Administrators and Center Directors). These individuals have authority to waive application of the FAA Buy American under certain findings. This request for waiver is submitted under T3.6.4.A.3.c(1), "application would be inconsistent with the public interest", for the reasons set forth below.

The engine generator set to be purchased is included in the national engine generator contract DTFA02-01-D-06602 with Kohler Company, a single source award based on standardization. The prices for the equipment are firm fixed unit prices. The contract is an indefinite delivery/requirements contract wherein the FAA is required to order from the contractor all the supplies or services specified in the contract schedule. Accordingly, the FAA will be in breach of the contract if the engine generator set is not ordered using this existing contract.

Second, the Buy American provisions may be waived if (a) The cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components of the facility or equipment used in the project; and (b) Final assembly of the facility or equipment described in this paragraph has taken place in the United States. The engine generator set to be purchased falls only slightly below the 60 percent, at approximately 58%, and

it meets the criteria of final assembly with 100% assembly in the United States.

Furthermore, the Atlanta ATCT design was completed in 2003 and commissioning was in 2006. The electrical power distribution system design was based on a radial concept with a single uninterruptible power system (UPS) for critical power and a single engine generator with combination automatic transfer switch for emergency essential power. This old design has several possible single points of failure that are inherent with its configuration. The most possible points of failure are associated with the single UPS, single E/G, single E/G combination switch and single main power distribution switchboard. These possible points of failure were the basis for a request from Air Traffic, ATSOG, ATSSC and ESA Operations Engineering to upgrade the Atlanta power system to a Critical Power Distribution Systems (CPDS) Type II, which is the current FAA requirement for this Level-12 Operational Evolution Plan ATCT.

Because the Atlanta Airport is the busiest in the world, and since the single thread of failure was experienced recently during a severe thunderstorm in April 2009, there is a critical need to install the redundant generator and uninterruptible power systems. During this recent storm, the ATCT was struck by lightning three times causing loss of commercial power, the generator failed to start and finally the uninterruptible critical power system failed. This condition not only created a life safety hazard for FAA personnel in the ATCT, but Air Traffic communications with pilots was lost, runway navigational aids monitoring failed and airport surface detection radar failed. To better support ATCT Life Safety systems and communications, NAVAIDS and radar, the second engine generator set should be purchased and installed as soon as possible. The recovery (F29) funds allow for adding inventory and thus are being used for the purchase of the engine generator set.

Based on these factors, a waiver is requested pursuant to exception of T3.6.4.A.3.c.(1), application would be inconsistent with the public interest.

Chris Lowmiller
Chris Lowmiller, Contracting Officer

5/7/09
Date

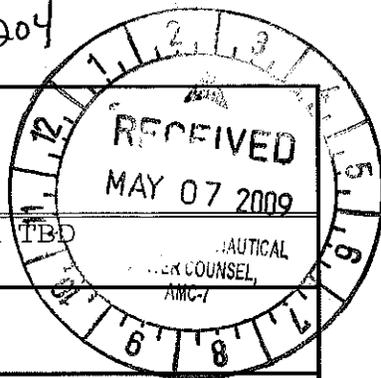
Coordination for Legal Sufficiency:

SEE ATTACHED

Date

14204

SPEED MEMO



SUBJECT: CONTRACT DTFA02-01-D-06602, KOHLER Co., DELIVERY ORDER TBD
Request for Waiver - Buy American Requirements

TO:

AMC-7

5-7-09
SIGNATURE OF ORIGINATOR
Chris Lowmiller
CHRIS LOWMILLER
TITLE
CO
ROUTING SYMBOL AMQ-240

INITIAL MESSAGE:

Subject waiver is attached for Legal review and coordination/comments.
Due to his involvement in "Recovery Act" requirements of the Power Services Division, Nathan Tash is aware of this requirement and said to feel free to contact him if you want to.

*Recovery Funds
(Stimulus)*

- () Block for Legal coordination on the Waiver, Tab 4
- () Suggest the following changes be made:

No legal objection!

REVIEWED BY	DATE
JRS	_____
MRB	_____
LFD	_____
ALH	_____
AJR	_____
JMW	_____
GKW	<i>LP</i> 5/7/09
LML	_____

FROM:

AMQ-240/Lowmiller
x(4)7889

DATE OF INITIAL MESSAGE
5/7/09
SIGNATURE OF REPLIER
[Signature]
TITLE
ROUTING SYMBOL *AMC-7*