

manufacturer is aware of the scheduling implications and has offered to provide the sluice gates at no cost, other than for freight and field service charges. The Town, which could not reasonably foresee the need for a waiver to the Buy American provision of the ARRA, submitted a waiver request immediately (July 9th, 2010) after they were informed by the manufacturer of the delivery oversight.

Re-ordering the gates and having them manufactured in the Massachusetts facility would delay the upgrade work to the final clarifiers by at least three months. Unfortunately, the existing final clarifier equipment has already failed, and since existing wastewater flows at the wastewater treatment plant are currently at seasonal lows, the most opportune time to install the new sluice gates would be during the July and August time frame.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or require the substantial redesign of projects that are "shovel ready," such as this project at the Bristol, Rhode Island Wastewater Treatment Plant. The implementation of the ARRA Buy American requirements in this case would result in additional cost for this project and unreasonable delay in its completion. Such delay would also directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs. More importantly, the imposition of the Buy American requirement would result in additional risk to water quality protection.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the Town's design engineer established a proper basis to specify that using the domestic manufactured good would be inconsistent with the public interest of the Town of Bristol, Rhode Island. The information provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA and in the April 28, 2009 Memorandum: Applying these requirements would be inconsistent with the public interest.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that using a domestically available alternative

manufactured good would be inconsistent with the public interest, the Town of Bristol, Rhode Island is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5. This waiver permits use of ARRA funds for the installation and utilization of foreign manufactured influent and effluent sluice gates as documented in the Town's waiver request submittal dated July 9, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

**Authority:** Pub. L. 111-5, section 1605.

Dated: September 15, 2010.

**Ira W. Leighton,**

*Acting Regional Administrator, EPA Region 1—New England.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9206-3]

### Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Lowell, MA

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [inconsistent with the public interest] to the City of Lowell, Massachusetts (City) for the purchase of a foreign manufactured 30-inch diameter pipe tee fitting for a finished water pipe at the Lowell Water Treatment Facility. This is a project-specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project-specific circumstances. The proposed work involved repairing an existing 30-inch cement lined ductile iron fitting on a finished water line in the Lowell Water Treatment Facility. Based upon information submitted by the City's consulting engineer, EPA has concluded that, under the given circumstances (*i.e.* emergency standby situation, the need to minimize disruption in water transmission service), requiring the installation of an alternative domestic

manufactured pipe fitting would be inconsistent with the public interest, and that a waiver of the Buy American provisions is justified. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to the requirements of Section 1605(a) of ARRA. This action allows the purchase and installation of the foreign manufactured 30-inch pipe fitting media, as specified in its June 18, 2010 request.

**DATES:** *Effective Date:* September 15, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Katie Connors, Environmental Engineer, (617) 918-1658, or, David Chin, Environmental Engineer, (617) 918-1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109-3912.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to the City of Lowell, Massachusetts for the purchase of a non-domestic 30-inch diameter pipe fitting for a finished water pipe at the Lowell Water Treatment Facility. EPA has evaluated the City's basis for procuring a 30-inch diameter pipe fitting from China at a cost of \$4,000. Based on the information provided by the City's design engineer, EPA has determined that it is inconsistent with the public interest for the City to have pursued the purchase of a domestically manufactured 30-inch diameter pipe fitting under the specific circumstances encountered by the City.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available

quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

When a recipient or sub-recipient has used foreign iron, steel, and/or manufactured goods for an ARRA project without authorization, as is the case here, OMB's regulation at 2 CFR 176.130 directs EPA to take appropriate action, which may include processing a determination concerning the inapplicability of Section 1605 of ARRA in accordance with 2 CFR 176.120.

Consistent with the direction of 2 CFR 176.120, EPA will generally consider a waiver request made after obligating ARRA funds for a project to be a "late" request. However, in this case EPA has determined that the City's request, though made after the date the contract was signed and after use of the foreign pipe fitting, can be evaluated as timely because the City could not reasonably have foreseen the need for such a determination until after initiating the work. Accordingly, EPA will evaluate the request as if it were timely.

The City is requesting a waiver of the Buy American provision for a 30-inch diameter pipe fitting that was manufactured in China which replaced an existing 30-inch diameter cement lined ductile iron fitting on a finished water line at the Lowell Water Treatment facility. According to the City's design engineer, the existing 30-inch diameter pipe fitting had been leaking for some time at the threaded connection with a 2-inch air release valve. The original intent of the City was to remove the air release valve, clean the threads, perform the necessary repairs, and re-install the existing 30-inch fitting. However, in the event of a possible break in the pipe delivery system or if the existing fitting failed during the repair work, a new 30-inch diameter pipe fitting had to be on-site on an emergency standby basis. As a result, the City explored having a 30-inch diameter pipe fitting on-site before they could start any additional repair work.

During the week of May 3rd, 2010, the City was informed by three suppliers/vendors that a 30-inch diameter domestic pipe fitting would not be available on an emergency standby basis unless the City purchased it outright. Based on information provided by the City's consulting engineer, due to the large size of the fitting, vendors would only make their imported 30-inch tee pipe fittings available on standby status, but not their domestic pipe fittings. As a result, no domestic-made fittings of

that size were available for stand-by in an emergency situation that would meet technical specifications. The City could not find a supplier/vendor that would promise right of first refusal on a domestic manufactured pipe fitting without purchasing it in full. None of the available vendors would allow the City the opportunity to return a 30-inch diameter domestic pipe fitting, if the City had decided on not installing it.

The City decided to order a 30-inch diameter foreign manufactured pipe fitting (made in China at a cost to the City of Lowell of \$4,000) to have it available on an emergency standby basis to minimize plant shutdown and any disruption of water service delivery, in the event total replacement became necessary or if the pipe delivery system failed. The City had planned to repair and re-install the existing pipe fitting, but once the repair work had begun, it was determined that complete replacement was the proper approach to take. During the week of June 14th, the new foreign manufactured 30-inch diameter pipe fitting was installed. Fortunately, and more importantly, no disruption of water transmission service took place due to proper planning. The City then made the request to the EPA for a waiver on June 18, 2010, immediately after the emergency replacement work took place and it could not reasonably foresee the need for such a determination until after initiating the repair work and determining that a complete replacement of the pipe fitting was the proper course of action.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or require the substantial redesign of projects that are "shovel ready," such as this project at the Lowell Water Treatment Plant. The imposition of ARRA Buy American requirements in this case would have likely resulted in unreasonable additional cost for this project and delay in its completion. Such delay would also directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs. More importantly, the imposition could have resulted in a risk to public health had water service been interrupted for any extended period of time.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the City's design engineer established a proper basis to specify that using the domestic manufactured good would be inconsistent with the public interest of the City of Lowell. The information

provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA and in the April 28, 2009 Memorandum: Applying these requirements would be inconsistent with the public interest.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that using a domestically available alternative manufactured good would be inconsistent with the public interest, the City of Lowell, Massachusetts is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5. This waiver permits use of ARRA funds for the purchase of a foreign manufactured 30-inch diameter pipe fitting documented in the City's waiver request submittal dated June 18, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

**Authority:** Public Law 111-5, section 1605.

Dated: September 15, 2010.

**Ira W. Leighton,**  
*Acting Regional Administrator, EPA Region 1—New England.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9205-5]

### **Science Advisory Board Staff Office Request for Nominations of Experts for the Review of Great Lakes Restoration Initiative Action Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations for technical experts to form an SAB panel to review the interagency Great Lakes Restoration Initiative (GLRI) Action Plan which describes restoration priorities, goals, objectives, measurable ecological targets, and specific actions.

**DATES:** Nominations should be submitted by October 15, 2010 per instructions below.