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Dated: March 25, 2011.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2011-7561 Filed 3-30-11; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Docket No. RM98-1-000]

**Records Governing Off-the-Record Communications; Public Notice**

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant

to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the

official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Prohibited:

Docket No.	File date	Presenter or requester
1. Project No. 460-000 .....	3-9-11	Charles Miller
2. Project No. 2677-019 .....	3-22-11	Byron D. Simon

Dated: March 24, 2011.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2011-7562 Filed 3-30-11; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9288-7]

**Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the DeSoto Parish Waterworks District 1, Louisiana**

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

**ACTION:** Notice.

**SUMMARY:** The Regional Administrator of EPA Region 6 is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the DeSoto Parish Waterworks

District 1 ("the District") for three (3) packaged, Memcor XS 48 submerged membrane filtration Systems (MFSs), manufactured by Siemens Water Technologies Corporation, proposed for the expansion of its existing water treatment plant. The District requires a submerged membrane treatment system capable of a 4-log removal of Giardia and Cryptosporidium at a production rate of 1 million gallons per day (MGD). The packaged, Memcor XS 48 submerged MFS is manufactured by foreign manufacturers and no United States manufacturer produces an alternative that meets the District's technical specifications. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on the specific project circumstances. The Regional Administrator is making this determination based on the review and recommendations of the EPA Region 6, Water Quality Protection Division. The District has provided sufficient documentation to support its request.

The Assistant Administrator of the EPA's Office of Administration and

Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of three packaged, Memcor XS 48 submerged MFSs not manufactured in the United States, for the proposed project being implemented by the District.

**DATES:** *Effective Date:* March 8, 2011.

**FOR FURTHER INFORMATION CONTACT:** Nasim Jahan, Buy American Coordinator, (214) 665-7522, SRF & Projects Section, Water Quality Protection Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c) and 1605(b)(2), 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 District for the acquisition of three packaged, Memcor XS 48 submerged membrane filtration systems (MFSs). The District has been unable to find an American made MFS to meet its specific water requirements.

Section 1605 of ARRA requires that none of the appropriated funds may be used 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 unless a waiver is provided to the recipient by EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with 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.

The District has provided information to the EPA demonstrating that there is no packaged, Memcor XS 48 submerged MFS manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specification. The District initiated planning on the water treatment plant expansion in 2008. They completed a pilot study of the submerged membrane filtration/treatment system and a System Improvement Plan, which were approved by the Louisiana Department of Health and Hospitals (LDHH).

The District requires a submerged membrane treatment system capable of a 4-log removal of Giardia and Cryptosporidium at a production rate of 1 MGD (694 gpm). As required by the project specifications, each skid-mounted packaged MFS must include the backwash system, clean in place (CIP) system, process control panel, compressed air system, automatic feed strainers, block and bleed valves for isolation during cleaning, and feed and filtrate turbidimeters. The specifications also require that the frequency of chemical cleaning must not exceed once per month, on average, while the frequency of maintenance washing must not exceed once per day.

Based on additional research conducted by EPA Region 6, there do not appear to be any domestic packaged, Memcor XS 48 submerged MFS manufacturers that would meet the District's technical specifications. EPA's national contractor prepared a technical assessment report based on the waiver request submittal, which confirmed the waiver applicant's claim that there are no American-made submerged MFS available for use in the proposed water treatment system.

EPA has also evaluated the District's request to determine if its submission is considered late or if it could be considered timely, as per the OMB

Guidance at CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says "the award official *may* deny the request." For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, the waiver request was submitted after the contract date because the District initiated an evaluation of substantial transformation for the submerged MFS; however, after having a thorough discussion at the Regional level, the District has made a decision that the issuance of the project specific waiver for the membrane equipment is the best way to ensure that the District is in compliance with the Buy American provisions of ARRA. There is no indication that the District failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider the District's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by the District and no loss by the government due to the late request.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111-5, the "American Recovery and Reinvestment Act of 2009", defines reasonably available quantity as "the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design." The District has incorporated specific technical design requirements for installation of membrane filtration cassettes at its wastewater treatment plant.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring utilities, such as the District, to revise their

standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

The Region 6 Water Quality Protection Division has reviewed this waiver request, and has determined that the supporting documentation provided by the District is sufficient to meet the criteria listed under ARRA, Section 1605(b), Office of Management and Budget (OMB) regulations at 2 CFR 176.60-176.170, and in the April 28, 2009, memorandum, "Implementation of Buy American provisions of Public Law 111-5, the American Recovery and Reinvestment Act of 2009". The basis for this project waiver is the authorization provided in ARRA, Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the District's technical specifications, a waiver from the Buy American requirement is justified.

EPA headquarters' March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of 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 this manufactured good was not available from a producer in the United States, the District is hereby granted a waiver from the Buy American requirements of ARRA, Section 1605(a) of Public Law 111-5 for the purchase of three packaged, Memcor XS 48 submerged MFSs, using ARRA funds, as specified in the District's request. This supplementary information constitutes the detailed written justification required by ARRA, Section 1605(c), for waivers "based on a finding under subsection (b)."

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

Issued on: March 8, 2011.

**Al Armendariz,**

*Regional Administrator, U.S. Environmental Protection Agency, Region 6.*

[FR Doc. 2011-7602 Filed 3-30-11; 8:45 am]

**BILLING CODE 6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

[FRL -9288-6]

### **Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Amarillo, TX**

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

**ACTION:** Notice.

**SUMMARY:** The Regional Administrator of EPA Region 6 is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City of Amarillo, Texas ("City") for the purchase of a 5 horsepower (HP) non-clog submersible pump, with NSF compliant wetted parts and appurtenances. As the pump will be submersed in the drinking water wet well, the project specification requires that all wetted components of the pump be manufactured with NSF 61 compliant materials. The 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances is manufactured by foreign manufacturers and no United States manufacturer produces an alternative that meets the City's technical specifications. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on the specific project circumstances. The Regional Administrator is making this determination based on the review and recommendations of the EPA Region 6, Water Quality Protection Division. The City has provided sufficient documentation to support its request.

The Assistant Administrator of the EPA's Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of a 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances not manufactured in America, for the

proposed project being implemented by the City.

**DATES:** *Effective Date:* March 8, 2011.

**FOR FURTHER INFORMATION CONTACT:** Nasim Jahan, Buy American Coordinator, (214) 665-7522, SRF & Projects Section, Water Quality Protection Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Section 1605(c) and 1605(b)(2), 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 for the acquisition of a 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances. The City has been unable to find an American made submersible pump with NSF 61 compliant wetted components to meet its specific requirements.

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 public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with 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.

The 5 HP non-clog submersible pump is part of a high service pump and transfer station at the City's Osage Treatment Plant, which pumps water out of the wet well of the City's water treatment plant. Because the pump will be submerged in potable drinking water, the project specifications require the pump's components that are in contact with the water in the wet well be constructed of materials that are NSF 61 Standard compliant. In addition, the project specifications require the following materials to be used for given pump parts.

- (1) Cast iron: The pump case, motor housing, and impeller.
- (2) Stainless steel: Pump shaft (wetted portion), guide rails, lifting chains, fasteners, and metal seal parts.
- (3) Viton (a fluoropolymer): O-rings.
- (4) Silicon-carbide: Seals.

The City clarified that NSF 61 compliance standards supersede certain components of the project specifications. In particular, the pump case, motor housing, and impeller are required to be constructed of stainless steel, and the seals are required to be fabricated of Viton or EPDM polymer. The City also indicated that the pump is not required to be NSF 61 Standard certified, but is required to have wetted components constructed of materials such as stainless steel that would not leach hazardous materials into the drinking water. The specifications also identified four acceptable manufacturers: Flygt, Fairbanks Morse, Wilo EMU, and Hydromatic. The City contacted all four manufacturers and confirmed that they could not provide a pump manufactured in the U.S. that meets the project specifications.

Based on additional research conducted by EPA Region 6, there does not appear to be any domestic 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances that would meet the City's technical specifications. EPA's national contractor prepared a technical assessment report based on the waiver request submittal. The report confirmed the waiver applicant's claim that there is no American-made 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances.

EPA has also evaluated the City's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at CFR § 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says "the award official *may* deny the request." For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet the City's project specification for this 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances. The waiver request is