

The Grants and Strategic Planning Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to establish a proper basis. The basis for this project waiver is the authorization provided in 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 City’s design specifications.

The 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 assistance 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 manufacturer in the United States, the City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of six Carrier split ductless AC units, manufactured in Mexico and South Korea, for a wastewater treatment plant project specified in the City’s waiver request of June 22, 2011. 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 21, 2011.

Dennis J. McLerran,
Regional Administrator, EPA, Region 10.
[FR Doc. 2011–26091 Filed 10–6–11; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

[FRL–9477–2]

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 West Monroe, LA

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 West Monroe (“the City”) for the purchase of the selected carbon steel pipe fittings and appurtenances (elbows, tees and flanges) to be incorporated in the Sparta Reuse Project—Waste Water Treatment Facility. The required carbon steel pipe fittings and appurtenances are 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 the selected carbon steel pipe fittings and appurtenances not manufactured in America, for the proposed project being implemented by the City.

DATES: *Effective Date:* September 26, 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 selected carbon steel pipe fittings and appurtenances (elbows, tees and flanges). The City has been unable to find American made carbon steel pipe fittings and appurtenances 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 City has provided information to the EPA demonstrating that there are no carbon steel pipe fittings and appurtenances manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specification. The City indicated that of the ten US companies contacted, seven could not meet the requirement to provide the fittings and flanges manufactured from carbon steel sourced from steel mills in the United States. The remaining three companies contacted did not respond to requests for information regarding the sources of metals used in the fabrication of their products.

The project specifications include requirements for the following pipe fittings and flanges:

Description	Quantity	Material	Code standard	Connection type
16-in. STD LR 90o elbow	6	Carbon Steel	ANSI A234 WPB	Butt weld.
20-in. STD LR 90o elbow	3	Carbon Steel	ANSI A234 WPB	Butt weld.
24-in. STD LR 90o elbow	16	Carbon Steel	ANSI A234 WPB	Butt weld.
20-in. STD LR 45o elbow	1	Carbon Steel	ANSI A234 WPB	Butt weld.
8-in. STD TEE	42	Carbon Steel	ANSI A234 WPB	Butt weld.
24-in. STD Raised Face Blind Flange	2	Carbon Steel	150# ANSI A105	Not applicable.

Description	Quantity	Material	Code standard	Connection type
24-in. STD Raised Face Weld Neck Flange	3	Carbon Steel	150# ANSI A105	Not applicable.
24-in. STD Flat Face Weld Neck Flange	1	Carbon Steel	150# ANSI A105	Not applicable.

Based on additional research conducted by EPA Region 6 there do not appear to be any American-made carbon steel pipe fittings 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, which confirmed the waiver applicant's claim that there are no American-made carbon steel pipe fittings and appurtenances available for use in the proposed waste water treatment system.

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 regulation at 2 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 City initiated an evaluation of substantial transformation for the pipe fittings and appurtenances; however, after having a thorough discussion at the Regional level, the City has made a decision that the issuance of the project specific waiver for the carbon steel pipe fittings and appurtenances is the best way to ensure that the City is in compliance with the Buy American provisions of ARRA. There is no indication that the City 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 City's waiver request, a foreseeable late request, as though it had been timely

made since there is no gain by the City 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 City has incorporated specific technical design requirements for installation of carbon steel pipe fittings and appurtenances 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 City, 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 City 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 City'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 goods required for this project, and that these manufactured goods are not available from a producer in the United States, the City is hereby granted a waiver from the Buy American requirements of ARRA, Section 1605(a) of Public Law 111-5 for the purchase of the selected carbon steel pipe fittings and appurtenances, using ARRA funds, as specified in the City'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: Pub. L. 111-5, section 1605.

Dated: September 26, 2011.

Al Armendariz,

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

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ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8999-4]

Environmental Impacts Statements; Notice of Availability

AGENCY: Office of Federal Activities, EPA.

General Information (202) 564-1399 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements
Filed 09/26/2011 Through 09/30/2011
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: <http://www.epa.gov/compliance/nepa/eisdata.html>.

EIS No. 20110332, Draft Supplement, USFS, MT, Montanore Project, Additional Information on Alternatives, Proposes to Construct a