

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 OMB ARRA Buy American Guidance cites the Federal Acquisition Regulation (FAR) as an appropriate reference for availability waiver inquiries. Specifically, the OMB Guidance at section 176.80(a)(1) states (at 77 FR 18452) that “The determinations of nonavailability of the articles listed at 48 CFR 25.104(a) and the procedures at 48 CFR 25.103(b)(1) also apply if any of those articles are manufactured goods needed in the project. The FAR’s list of nonavailable articles includes “Fibers of the following types: \* \* \* coir,” thereby establishing a presumption of lack of U.S. availability. The FAR procedures at 48 CFR 25.103(b)(1) specified as required in the OMB Guidance state that: (1)(i) A nonavailability determination has been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. government and nongovernment demand. (ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources.

The applicant met the procedures specified for the availability inquiry as appropriate to the circumstances by conducting on-line research and contacting suppliers, and all sources indicated that coconut fiber woven mats are only manufactured outside of the U.S. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, coconut fiber woven mats are not manufactured in the United States, and no other U.S. manufactured product can meet Mecklenburg County’s performance specifications and requirements for this project.

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 agencies such as Mecklenburg County Land Use and Environmental Services Agency, to revise their standards and specifications. The imposition of ARRA Buy American requirements on such projects otherwise eligible for ARRA State Revolving Fund assistance would result in unreasonable delay and thus

displace the “shovel ready” status for this project. To further delay project implementation is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

EPA’s national contractor prepared a technical assessment report dated December 22, 2009, based on the submitted waiver request. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. The report confirmed the waiver applicant’s claim that there are no comparable domestic products that can meet the specific durability, size and biodegradation needs of this project.

The information and supporting documentation provided by Mecklenburg County is sufficient to meet the criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009, “Implementation of Buy American provisions of Public Law 111–5, the ‘American Recovery and Reinvestment Act of 2009’ Memorandum”: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2) of the ARRA. 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 County’s performance specifications and requirements, a waiver from the Buy American requirement is justified.

The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the 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 this manufactured good was not available from a producer in the United States, Mecklenburg County Land Use and Environmental Services Agency, is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of coconut fiber woven mats using ARRA funds as specified in the Mecklenburg County Land and Environmental Services Agency request of December 16, 2009. 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: January 28, 2010.

**J. Scott Gordon,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2010–3684 Filed 2–23–10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL–9117–6]

### Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Massachusetts Water Resources Authority (MWRA)

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

**ACTION:** Notice.

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**SUMMARY:** The EPA is hereby granting a waiver of the Buy America 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 Massachusetts Water Resources Authority (“MWRA”) for the purchase of a 1.5 megawatt (MW) foreign manufactured wind turbine for the DeLauri Pump Station Renewable Energy Project in Charlestown, Massachusetts. 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. Based upon information submitted by the MWRA, it has been determined that there is currently no domestically manufactured wind turbine available or one that can be supplied to meet its proposed project specifications. 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 Section 1605 of ARRA. This action permits the purchase of a foreign manufactured 1.5 MW wind turbine by the MWRA, as specified in its November 19, 2009 request.

**DATES:** *Effective Date:* February 11, 2010.

**FOR FURTHER INFORMATION CONTACT:**

David Chin, Environmental Engineer, (617) 918-1764, or Katie Connors, Environmental Engineer, (617) 918-1658, 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 Sections 1605(c) and 1605(b)(2), 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 MWRA for the purchase of a foreign manufactured 1.5 MW wind turbine to meet the MWRA's design and performance specifications as part of its proposed DeLauri Pump Station Renewable Energy Project in Charlestown, MA.

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 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.

The MWRA is proposing a renewable energy project consisting of a 1.5 MW wind turbine, secondary unit substation, switchgear, associated conductors and controls to be installed at an existing MWRA wastewater pump station (DeLauri Pump Station) in Charlestown, Massachusetts (MA). The DeLauri Pump Station has an average flow of 31 million gallons a day (mgd) and a peak capacity of 93 mgd and serves Charlestown and portions of the communities of Somerville, Cambridge, and Medford, MA. The pump station functions during dry and wet weather and serves to overcome the hydraulic differential required to continue gravity flow through the MWRA collection system and eventually to the Deer Island Wastewater Treatment Plant.

The site is located on an MWRA owned parcel of land along the north bank of the Mystic River and just west of Alford Street (Route 99) in the Charlestown section of Boston. The property area is comprised of 8.65 acres located in a strictly industrial area and does not have any immediate residential abutters. The DeLauri Pump Station building is located in the middle of the property. The planned location for the wind turbine is near the southwest edge of the Pump Station property adjacent to the Mystic River, and approximately 275 feet west of Route 99, a heavily traveled 4 lane undivided highway. The site is adjacent to the Boston Water and Sewer Commission property and directly across the highway from the 1600 MW U.S. Power Generating Company's Mystic Power Plant.

The MWRA is requesting a waiver for the purchase of a 1.5 MW wind turbine (comprised of all turbine components, including the blades, the nacelle (*i.e.* cover housing that holds the equipment within a wind turbine), the gear box, low and high speed shafts, generator, controller, and brake), which is manufactured by Sinovel in China. The wind turbine is expected to generate electrical power to provide 80% of the simultaneous energy needs of the wastewater pump station itself. Contingent on pump station demand and wind conditions, the wind turbine is also expected to contribute more than 2.65 million kilowatt hours per year of clean renewable electricity back to the power grid, which is not consumed simultaneously with pump station demand. It should be noted that Massachusetts is one of several northeast states that has a climate change action plan which calls for significant CO<sub>2</sub> emission reductions by 2020. Integral to that plan is a wider adoption of non-emitting renewable sources of electricity. Wind power is currently the most practical source of renewable energy to meet that goal. The Massachusetts' Renewable Portfolio Standard (RPS) requires an increasing amount of the electricity sold in the Commonwealth to come from renewable electricity, including wind power. RPS is also one of the major policy tools put in place to meet the CO<sub>2</sub> reduction goals under the climate change plan. This project, while small, would contribute towards achieving those goals.

The MWRA waiver request was submitted just after the project was advertised for bid. The estimated total cost of the proposed design, build, and operate project is \$4.7M, with the wind turbine accounting for approximately half of the total cost. MWRA has specified a 1.5 MW wind turbine, with

a height of approximately 262 feet to the top of the tower, and 393 feet to the tip of the blade. The maximum blade diameter will be approximately 269 feet. This is the largest (and most efficient) wind turbine that can be installed and still comply with height limitations imposed by the Federal Aviation Administration at this particular site.

The MWRA has researched available domestic and foreign wind turbine manufacturers. One domestic manufacturer produces a larger capacity wind turbine, but the height of that turbine exceeds the Federal Aviation Administration height limitations for the site, and thus could not meet project specifications. Another domestic manufacturer that produces a wind turbine that meets project specifications was identified, but it is not willing to supply a wind turbine for installation at the DeLauri Pump Station due to site limitations. The domestic manufacturer's internal siting considerations recommended that, for safety in the event of icing, a setback distance of 1.5 times the hub height and rotor diameter be maintained. As the existing site did not allow for such a setback distance, the domestic manufacturer declined to make its product available for this project. However, the domestic manufacturer's internal siting considerations also provided for other possible mitigation techniques for properties that do not meet these setback considerations, but the manufacturer did not offer to make its product available based on the potential application of such techniques at this site.

One foreign manufacturer, which has been identified to have a 1.5 MW wind turbine that meets the technical specifications required by the MWRA, currently does not use the same site consideration limitations applied by the domestic manufacturer. The foreign manufacturer has agreed to supply a 1.5 MW wind turbine to the MWRA. There was also another foreign manufacturer that had been identified by the MWRA which had a 1.5 MW wind turbine that could meet the technical specifications, but that foreign manufacturer is now unwilling to provide single wind turbine installations.

There are currently no local, State, Federal, or international requirements regulating setback distances associated with potential icing conditions while operating wind turbines. There have been guidelines that have been suggested by various wind energy industry groups, some of which the identified domestic manufacturer has adopted, as well as model zoning ordinance/bylaws like the one that the

Commonwealth of Massachusetts introduced in 2009. The technical aspect of detecting and controlling icing through instrumentation and equipment also is evolving.

Based on information provided to the EPA, MWRA has taken all of the necessary steps to obtain all necessary local, state, and federal approvals to move forward with the proposed project. The project has been reviewed by the following regulatory agencies: Federal Aviation Administration (*i.e.* received a Determination of No Hazard to Air Navigation); the Boston Conservation Commission (*i.e.* an Order of Conditions); the Boston Redevelopment Authority; the Massachusetts Department of Environmental Protection (*i.e.* Chapter 91 Waterways License); Federal Communications Commission; and the Massachusetts Historical Commission. The MWRA has also completed significant public outreach to abutters (*i.e.* Boston Water and Sewer Commission, the Massachusetts Bay Transportation Authority, and the U.S. Power Generating Company), the Massachusetts Highway Department, local associations (*i.e.* City of Boston's Office of Neighborhood Services Department, the Charlestown Neighborhood Council (CNC), the CNC Development Committee, and the Charlestown Waterfront Coalition), local officials and Congressional staff.

Based on information provided by the MWRA, concerns associated with potential ice throws from the wind turbine were not raised during the permitting and public outreach process. It should be noted that there are a number of existing wind turbine installations in Massachusetts that do not conform to the site setback considerations used by the domestic manufacturer. However, because the site setback and associated safety considerations were the basis for the unavailability of the domestic wind turbine, EPA must address these considerations in its findings and determination on this waiver request.

A July 2008 University of Massachusetts (UMASS) Wind Energy Center research paper (Wind Turbine Siting—An Assessment of Safety Risks in Massachusetts and New England) suggests that the risks in these cases are relatively low. The paper references a study which notes that there have been no reported injuries from ice throws from wind turbines, despite the installation of 6,000 MW of wind energy worldwide. The UMASS study further suggests that while icing can be severe in New England, the incidence of icing events is relatively small. Several papers

have noted that the odds of being struck by ice fragments from a wind turbine are similar to those odds of being struck by lightning.

However, while these analyses place the low risks from ice damage or injury in the perspective of the experience available, the experience with these risks is largely anecdotal and has not been systematically assessed in situations where precautionary setback distances to heavily traveled public highways are not met. Several reports recommend that if setback distances cannot be maintained, alternative mitigation methods may be effective at limiting safety risks. As noted above, the use of mitigation measures—which may include monitoring the approach of conditions likely to lead to icing, shutting down the turbine in the event of icing, careful restart procedures, and a range of appropriate operational control strategies and measures—is also considered appropriate under the domestic manufacturer's internal siting considerations where setback distances cannot be met. This approach is consistent with available guidelines and model bylaws.

The MWRA, in discussions with the EPA Regional Office, has indicated that it will implement a mitigation plan to minimize any potential ice throws to ensure public safety. Commercial wind turbines have been designed with vibration sensors to detect any imbalance which might be caused by icing of the blades, resulting in an automatic shutdown (or preventing start up) of the turbine when this imbalance is detected. In situations where conditions indicate a risk of icing of wind turbine components, mitigation measures can be taken automatically or manually. The foreign manufacturer supplying the wind turbine to the MWRA has indicated that the turbine comes equipped with vibration sensors to shut down when ice build up is detected. The contractor who will install the wind turbine has indicated that the control system can be programmed to allow for manual start up as well, which will allow an operator to visually inspect the turbine to confirm that there is no ice remaining before the turbine is re-started. The MWRA will implement manual wind turbine operational control strategies during periods of ice accretion which include, but are not limited to: Curtailment of operation of the turbine, braking the blades in a "Y" to facilitate ice shedding directly underneath the wind turbine, and yawing the nacelle so that the blades are in the safest position for ice shedding. It may also post warning signs alerting personnel of the

potential risk in the area. Access to the turbine area site will be restricted during icing conditions, if necessary.

Based on the evaluation of all of the submitted documentation by EPA's technical review team, MWRA's statement that no U.S. manufacturer will provide a 1.5 MW wind turbine generator that meets project specifications is supported by the available evidence. In addition, the evaluation of the supporting documentation indicates that at least one foreign manufacturer, Sinovel, will provide its wind turbine at the proposed site. Accordingly, EPA finds that the Sinovel wind turbine is available on terms that address the basis of the unavailability of the domestic-made wind turbine if the MWRA's mitigation plan as stated above is implemented. EPA further finds that the MWRA's acceptance and use of this waiver represents a commitment by the MWRA to implement the mitigation plan, and that such continuing implementation will constitute the MWRA's basis for compliance with the requirements of ARRA § 1605 with respect to this wind turbine.

The purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring potential SRF eligible recipients, such as the MWRA, to find alternative project sites when appropriate and more timely and feasible measures are available consistent with project design standards and specifications. The imposition of ARRA Buy American requirements in this case would result in unreasonable delay and potentially the cancellation of this project as sited. The delay or cancellation of this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

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'" ("Memorandum"), 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 same Memorandum defines "satisfactory quality" as "the quality of steel, iron or manufactured good specified in the project plans and designs."

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting

documentation provided by the MWRA establishes both a proper basis to specify a particular manufactured good, and that no domestic manufacturer is currently available or willing to supply that particular manufactured good which meets project specifications. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

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 a proper basis to specify the particular good required for this project, that the MWRA has agreed to implement a mitigation plan to minimize the likelihood of any potential ice throws to ensure public safety, and that this manufactured good was not available from a producer in the United States, the MWRA 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 wind turbine documented in MWRA's waiver request submittal dated November 19, 2009. 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: February 11, 2010.

**Ira Leighton,**

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

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9117-4]

### Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Old Town Water District in Old Town, ME

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

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [inconsistent with the public interest] to the Old Town Water District ("Town") in Old Town, Maine for the purchase of GreensandPlus pressure filter media, manufactured in Brazil, for two of the 12 foot diameter filters. 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 Town evaluated three different types of pressure filter media during a pilot test in April of 2008 and, well before the enactment of ARRA, selected GreensandPlus filter media. The media was purchased for the first two of four filter beds in October 2008, when the price of the media was determined for all four beds. The media was installed in two of the filter beds in January 2009. The ARRA funded project is for the other two filter beds in the Old Town Water District system. If an alternate domestic filter media were to be installed in the remaining two filter beds, the Maine Drinking Water Program would require replacement of the underdrain and associated piping, which would increase the cost of the project from \$40,019 to \$86,405. Based upon information submitted by the Town, its consulting engineer, and the Maine Department of Health and Human Services (MEDHHS), EPA has concluded that, under these circumstances, requiring the installation of an alternative domestic filter media 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 permits the purchase of GreensandPlus pressure filter media, as specified in its November 7, 2009 request.

**DATES:** *Effective Date:* February 12, 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 Old Town Water District (Town) in Old Town, Maine for the purchase of non-domestic GreensandPlus pressure filter media for two 12 foot diameter filters. EPA has evaluated the Town's basis for procuring the GreensandPlus pressure filter media for these filters. Based on the information provided by the applicant and the State of Maine, EPA has determined that it is inconsistent with the public interest for the Town to pursue the purchase of domestically manufactured filter media.

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.

The Town is requesting a waiver of the Buy American provision for the GreensandPlus filter media for two 12 foot diameter filters. At the Town's water treatment plant, there are four filter beds. In April of 2008, the Town performed a pilot study of three different pressure filter media. Well before the enactment of ARRA, they selected GreensandPlus media—which is manufactured in Brazil—because it was more appropriate for the configuration of the Old Town Water District system. The GreensandPlus media was purchased for the first two filter beds in October 2008, when the price was locked in for all four filter beds. The media was installed in January 2009 for the first of the filter beds. The ARRA funded project to the Town is for the installation of the GreensandPlus media for iron and