

of high-speed, high-efficiency magnetic bearing turbo-compressors that are manufactured in Sweden.

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, or unless a waiver is provided to the recipient by the head of the appropriate agency, here 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.

These manufactured goods will provide aeration for Auburn's activated sludge treatment process. The city selected the magnetic bearing technology because of its ability to avoid overheating and its track record of providing long-standing reliable service—key advantages over the competing airfoil bearing technology. Auburn's submissions clearly articulated functional reasons that justified their technical specifications and requirements.

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 applicant met the requirements specified for the availability inquiry as appropriate to the circumstances by conducting an extensive investigation into all possible sources for high-speed, high-efficiency turbo-compressors. Based on the investigation, five companies were found to manufacture these machines, but only two (ABS and one other company) used magnetic bearings. Moreover, both of the companies that use magnetic bearings manufacture their machines overseas. Auburn believes that since ABS has multiple municipal wastewater treatment plant installations in the Midwest and that its competitor has none, that the ABS turbo-compressor

technology has been proven and would perform reliably in this specific application. Therefore, Auburn contends that there is no domestic product of satisfactory quality available.

EPA's national contractor prepared a technical assessment report dated January 27, 2010, 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. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, the high-speed, high-efficiency magnetic bearing turbo-compressors necessary for this project are not manufactured in the United States, and no other U.S. manufactured product can meet Auburn's project performance specifications and requirements.

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 communities such as Auburn to revise their standards and specifications and to start the bidding process again. 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.

The State and Tribal Programs Branch has reviewed this waiver request and has determined that the supporting documentation provided by Auburn 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 item in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet Auburn's project 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, Auburn is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of high-speed, high efficiency magnetic bearing turbo-compressors using ARRA funds as specified in the community's request of December 21, 2009. 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: March 25, 2010.

**Walter W. Kovalick,**

*Acting Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9145-4]

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to Warren County, OH (Warren County)

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

**ACTION:** Notice.

**SUMMARY:** The EPA 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 of a satisfactory quality] to Warren County for the purchase of a Trojan UV 4000 Plus medium-pressure, high-intensity ultraviolet disinfection system to treat effluent from the Lower Little Miami River Wastewater Treatment Plant. 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 project-specific circumstances. This disinfection system, which is supplied by Trojan Technologies of London, Ontario, is manufactured in Canada and meets

Warren County's performance specifications and requirements. The Acting Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. Warren County has provided sufficient documentation to support its request. 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 Trojan UV 4000 Plus medium-pressure, high-intensity ultraviolet disinfection system for the Lower Little Miami River Wastewater Treatment Plant that may otherwise be prohibited under Section 1605(a) of the ARRA.

**DATES:** *Effective Date:* January 26, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Andrew Lausted, SRF Program Manager (312) 886-0189, or Puja Lakhani, Office of Regional Counsel, (312) 353-3190, U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA section 1605(c) and pursuant to section 1605(b)(2) of Public Law 111-5, the Buy American requirements, EPA hereby provides notice that it is granting a project waiver to Warren County for the acquisition of a Trojan 4000 Plus medium-pressure, high-intensity ultraviolet disinfection system that is manufactured in Canada.

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, or unless a waiver is provided to the recipient by the head of the appropriate agency, here 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.

These manufactured goods will provide wastewater effluent disinfection for Warren County's Lower Little Miami River Wastewater Treatment Plant. Early in the design process, the County decided to use a UV system that utilizes a medium pressure UV lamp. Warren County's plant is relatively large and a

medium pressure UV system uses many fewer UV lamps than a low pressure system, and consequently has reduced operation and maintenance costs and requires a much smaller building to house the UV system.

While there are two companies that manufacture medium pressure UV systems that are marketed in the United States for use in wastewater disinfection, each manufacturer implements the technology differently which generally requires a completely different facility layout. Based on cost and technical concerns, the County decided in 2008—prior to the enactment of ARRA—to finalize plant design using the Trojan 4000 Plus medium-pressure, high intensity ultraviolet disinfection system with an open-channel configuration that will meet the capacity requirements of the project.

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."

Here, the applicant met the requirements specified for the availability inquiry by conducting an extensive investigation into all possible sources for medium-pressure, high intensity ultraviolet disinfection systems that can meet the capacity requirements of the project. The one potential alternative to the Trojan 4000 Plus system, an American-manufactured, medium-pressure ultraviolet disinfection system for wastewater, was a closed-vessel, in-pipe system rather than an open-channel system. Use of this alternative would require a substantial and costly redesign of the disinfection facility from the project specifications as finalized in 2008. Based on the information provided to EPA and to the best of our knowledge at this time, because the Trojan 4000 Plus is the only system that can meet the design specification for an open-channel medium-pressure high-intensity UV disinfection system, EPA believes that there is no domestic product of satisfactory quality available to meet this justified specification.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, and not to delay projects that are "shovel ready" by requiring communities such as Warren County to revise substantially their project design

and specifications, start the bidding process again, and potentially choose a more costly, less efficient project. In this situation, the imposition of ARRA Buy American requirements on a project 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.

Based on the submitted waiver request, EPA's national contractor prepared a technical assessment report dated November 3, 2009. 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 that was provided. The report confirmed the waiver applicant's claim that there are no comparable domestic products that can meet the design specifications for the project. Therefore, based on the information provided to EPA and to the best of our knowledge at this time, the medium-pressure, high-intensity open-channel configuration ultraviolet disinfection system necessary for this project is not manufactured in the United States, and no other U.S. manufactured product can meet Warren County's project performance specifications and requirements.

The State and Tribal Programs Branch has reviewed this waiver request and has determined that the supporting documentation provided by Warren 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 item in the United States in sufficient and reasonably available quantities and of a satisfactory quality to meet Warren County's project 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, Warren County is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of a Trojan 4000 Plus medium-pressure, high-intensity ultraviolet disinfection system using ARRA funds as specified in the community's request of October 29, 2009. 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: January 26, 2010.

**Walter W. Kovalick,**

*Acting Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9146-9]

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Albuquerque Bernalillo County Water Utility Authority, New Mexico

**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 Albuquerque Bernalillo County Water Utility Authority ("ABCWUA") for the purchase of three hundred acoustic leak detection sensors/loggers ("loggers") and one fully programmable radio transceiver. The loggers and radio transceiver under consideration are manufactured by Gutermann, Inc., and no United States manufacturer produces an alternative that meets the ABCWUA'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 ABCWUA 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 hundred loggers and one radio transceiver containing goods not manufactured in America, for the proposed project being implemented by the ABCWUA.

**DATES:** *Effective Date:* April 28, 2010.

**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 ABCWUA for the acquisition of three hundred loggers and one radio transceiver (Model: Gutermann Zonescan 820). The ABCWUA has been unable to find an American made logger manufacturer to meet its specific requirements of cross correlation functionality for pinpointing leaks throughout its water distribution system.

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 ABCWUA is implementing a comprehensive asset management program, and leak detection is critical to better management of its water system assets. The ABCWUA desires to quickly

and efficiently locate leaks in its wastewater distribution system and seeks ARRA funding to purchase loggers that can easily be deployed on the water distribution system, that are non-invasive, and are designed to detect noise generated from vibrations of water escaping from pipes. Efficient leak detection provides timely data on the types of leak and potential cause. It helps the utility authority in identifying high priority assets needing rehabilitation/replacement, which can effectively reduce the chances of catastrophic failure.

Accordingly, the ABCWUA on January 22, 2010 concluded an ARRA assistance agreement with the State of New Mexico to fund a project to procure and deploy leak detection equipment for its distribution system. The bid documents for the project include the specifications for loggers and one radio transceiver having cross correlation functionality for exactly pinpointing leaks throughout the water distribution system. The ABCWUA had received four bids for this project on January 20, 2010, and upon identifying Gutermann as the only bidder to provide a data logger that included this cross-correlation functionality, submitted a timely waiver request to EPA on February 5, 2010.

The ABCWUA is requesting a waiver for the use of three hundred loggers and one programmable radio transceiver (Model: Gutermann Zonescan 820) on the basis that there are no domestic manufacturers of the loggers that will meet the ABCWUA product specifications.

The ABCWUA authority received four bids for the acoustic leak detection equipment project. Among the four bidders, the bid submitted by Gutermann was the only leak detection logger that met ABCWUA's specifications. Specifically, the logger was required to have the feature of cross correlation functionality for pinpointing leaks. Gutermann's Zonescan 820 loggers automatically perform leak noise correlation for pinpointing the leak location. In addition, automatic multi-correlation provides precise positions between all loggers in the same project area. As this feature maximizes the efficiency and effectiveness of the crucial functions of enabling the ABCWUA to conserve and prevent contamination of scarce water supplies that have already been treated to comply with National Primary Drinking Water Regulations, EPA finds that the ABCWUA's specification of this feature is justified.

Although there are loggers that are manufactured in the United States, the