

According to Auburn-Lewiston, the subcontract to furnish and install the ductile iron pipe and pipe fittings was awarded on March 11, 2010 and none of the subcontractors raised any concerns about getting the pipe fittings delivered on time. A purchase order for the ductile iron piping and fittings was placed on April 29, 2010 with an agreed upon shipping date of July 19, 2010 to meet the project schedule.

On July 19, 2010, the supplier received notification from the domestic foundries manufacturing the subject fittings that due to production order backlog, delivery of standard fittings would be delayed at least 4 weeks and delivery of the special, non-standard fittings (long radius bends and large diameter tees) could be delayed at least 8 weeks. The project procurement manager reported that the estimated 4 and 8 week delays were not guaranteed and that the delays could be longer. The possibility of delays was confirmed by EPA's national contractor in conversation with the manufacturer.

The project schedule called for delivery and installation of the ductile iron pipe fittings between July 16, 2010 and August 12, 2010, so the testing of the lines could be initiated prior to September 1, 2010. In addition, the ultraviolet disinfection treatment system testing completion and operator training milestone date is December 8, 2010, with an overall project completion and transfer of facility to the owner date of January 5, 2011. If the delivery of the pipe fittings is delayed until mid-September of 2010, it is estimated that final completion date will be pushed back to at least several weeks. There also has been no guarantee given by the manufacturer that the fittings will be delivered by mid-September, the revised delivery date. According to Auburn-Lewiston, delivery times for certain items are being quoted as long as six months for existing orders.

The project procurement manager solicited quotations and committed delivery times for non-domestic manufactured ductile iron fittings from two local suppliers. Based on the information that was obtained, the non-domestic manufactured ductile iron pipe fittings necessary for the project, with the exception of one 24" x 4" tee, could be delivered within a time frame to meet the project schedule. The work could be coordinated to accommodate the later delivery of the 24" x 4" tee and preserve the December 8, 2010 overall system testing and operator training milestone date, as well as the January 5, 2011 overall project completion date.

Based on the review conducted by EPA's national contractor, Auburn-

Lewiston's claim that the specific ductile iron fittings are not available from a domestic manufacturer to meet project schedule milestones is supported by the available evidence. At least eight additional potential domestic manufacturers of ductile iron pipe fittings were contacted and it was determined that none would be able to meet the required project delivery schedule.

Furthermore, 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 Auburn-Lewiston to either revise their design standards and specifications, or in this situation significantly alter its construction schedule. The imposition of ARRA Buy American requirements in this case would result in an unreasonable delay for this project. To delay 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 Pub. L. 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 Auburn-Lewiston establishes both a proper basis to specify a particular manufactured good, and that the domestic manufactured good is currently not available to meet the construction schedule for the proposed project. 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 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 City of Lewiston, Maine and the Auburn, Maine Water District are 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 non-domestic manufactured pipe fittings documented in Auburn-Lewiston's waiver request submittal dated July 28, 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 Town of Bristol, RI

**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 Town of Bristol, Rhode Island (Town) for the utilization and installation of two influent and two effluent sluice gates for the facility's two final clarifiers as part of a larger overall wastewater treatment plant upgrade project. 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 had been assured by the manufacturer that the sluice gates would be made in a facility in Massachusetts. However, the manufacturer informed the Town of Bristol in writing on July 8, 2010 that

due to an internal miscommunication, the sluice gates that were delivered to the site for installation were actually manufactured in Canada, and not in Massachusetts. The manufacturer has offered to provide these sluice gates at no charge other than the cost for freight and field service. Re-ordering the sluice 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 is failing, and given that existing wastewater flows at the wastewater treatment plant are at seasonal lows, the most opportune time to install the sluice gates would be during the July and August time frame. Based upon information submitted by the Town's consulting engineer, EPA has concluded that requiring the installation of domestic manufactured sluice gates, which would extend the time frame by at least three months, 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 installation of the foreign manufactured influent and effluent sluice gates, as specified in its July 8, 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 Town of Bristol, Rhode Island for the installation of two influent and two effluent sluice gates for two final clarifiers as part of a wastewater treatment plant upgrade project. Based on the information provided by the Town's design engineer, EPA has determined that it is inconsistent with the public interest for the Town to further delay the project

and pursue the purchase of domestically manufactured sluice gates.

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.

Consistent with the direction of OMB's regulation at 2 CFR 176.120, EPA will generally consider a waiver request with respect to components that were specified in the bid solicitation or in a general/primary construction contract or those made after obligating ARRA funds for a project to be a "late" request. However, in this case EPA has determined that the Town's request, though made after the date the contract was signed, can be evaluated as timely because the manufacturer informed the general contractor on July 8, 2010 that due to an internal miscommunication, the sluice gates that were delivered to the construction site had been manufactured in its Quebec, Canada facility. The need for a waiver was not determined until after the general contractor was informed of the miscommunication and delivery of the foreign manufactured sluice gates. The recipient could not reasonably have foreseen the need for a determination until informed of the error. Accordingly, EPA will evaluate the request as if it were timely.

The Town is requesting a waiver of the Buy American provision for installation of two influent and two effluent sluice gates for the facility's two final clarifiers as part of a larger overall wastewater treatment plant upgrade project. The planned upgrades to the final clarifiers include removal and replacement of the following equipment: (a) Two clarifier mechanisms including trusses supporting the sludge rakes; scum skimmers; drive mechanisms and a new walkway; (b) two influent and two effluent sluice gates; (c) scum removal

equipment; and (d) effluent weirs and troughs. The sluice gates are necessary for isolating each final clarifier and are currently not functional as they are remain "stuck" in the open position. The existing clarifier mechanisms are over twenty years old and in need of immediate repair. The mechanisms are approximately 75 feet in diameter and scrape the settled sludge to the sludge pump for withdrawal and processing. Each mechanism also incorporates scum removal rake arms and scum troughs that provide scum removal from the surface of the tanks.

One of the final clarifier skimmer arm supports began to fail in June of 2009. The supports became bent making the entire mechanism inoperable. In order to allow the continued removal of the sludge from the bottom of the tank, the sludge collection arms needed to be removed. Since the existing sluice gates were inoperable, the Town was required to hire a diver to disconnect the skimmer support arms. Immediately after the failure of the first final clarifier skimmer, the skimmer arm for the second final clarifier also failed and was also removed. Since the removal of the skimmer arms last summer and until the completion of these proposed upgrades, wastewater treatment plant personnel have been manually removing scum from these tanks.

The Town's general contractor submitted the sluice gate shop drawings for review in February of 2010. The Town's design engineer reviewed the shop drawings and determined that the sluice gates were manufactured in Canada and would not meet the Buy American requirements. This was conveyed to the general contractor in March of 2010. The general contractor was informed by the manufacturer that it had the capability to manufacture the sluice gates at its Orange, Massachusetts facility. Based on the belief of all parties that this would satisfy the Buy American requirements, the project proceeded and the gates were scheduled for delivery and installation in July of 2010. All of the other final clarifier equipment has been delivered to the site and is ready for installation, pending installation of the new sluice gates.

Unfortunately, the manufacturer informed the general contractor on July 8, 2010 that due to an internal miscommunication, the sluice gates that were delivered to the construction site had been manufactured in its Quebec, Canada facility, not in Orange, Massachusetts. The Town had been assured by the manufacturer in March of 2010 that the sluice gates would be made in the Orange, Massachusetts manufacturing facility. The

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