

in compliance to a provision in their Stipulation and Agreement accepted on August 12, 2010.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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*Comment Date:* 5 p.m. Eastern time on Thursday, October 14, 2010.

**Kimberly D. Bose,**  
*Secretary.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9214-6]

### 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)(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 Lowell, Massachusetts ("City") for the purchase of a foreign manufactured heat recovery ventilator for the Lowell Wastewater Treatment Facility and Warren Street Combined Sewer Overflow (CSO) Diversion Station Improvements 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. Based upon information submitted by the City and its consulting engineer, it has been determined that there are currently no domestically manufactured heat recovery ventilators available to meet its proposed project and performance 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 heat recovery ventilator by the City, as specified in its July 14, 2010 request.

**DATES:** *Effective Date:* October 8, 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(b)(2) of Public Law 111-5, Buy American requirements, to the City for the purchase of a non-domestically manufactured fixed plate heat recovery ventilator to meet the City's design and performance specifications as part of its proposed Lowell Wastewater Treatment Facility and Warren Street Combined Sewer Overflow (CSO) Diversion Station Improvements Project.

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.

EPA has determined that the City's waiver request may be treated as timely even though the request was made after the construction contract was signed. Consistent with the direction of the OMB Guidance at 2 CFR 176.120, EPA has evaluated the City's request to determine if the request constitutes a late request. 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, in this case EPA has determined that the City's request, though made after the date that the contract was signed, can be evaluated as timely because the need for a waiver was not reasonably foreseeable. After the contract date, during the shop drawing review, a domestic specified fixed plate heat recovery ventilator was found to be unavailable by the contractor. The need for a waiver was not determined until after the contractor had completed a search for a domestic manufacturer and had confirmed that there were no domestically made fixed plate heat recovery ventilators available to meet project specifications. Accordingly, EPA will evaluate the request as a timely request.

The City is requesting a waiver from the Buy American provision of ARRA for one Cleanair Designs Heat Recovery Ventilator for use in the proposed activated sludge treatment building. The unit is scheduled for installation on the roof. The unit will provide ventilation and heating to the building and the design includes an air-to-air heat exchanger. The exchanger will recover energy in the exhaust air stream and transfer it to the fresh air stream, reducing the energy consumption during the heating season, with zero cross-contamination between the air streams.

The City has researched foreign and domestic manufacturers of fixed plate heat recovery ventilators and has determined that domestic manufacturers are not able to manufacture a unit that meets all the project specifications. The specifications require that the heat exchanger be constructed with a polypropylene plate. The polypropylene plate was specified because the atmosphere inside the building where the heat recovery ventilator will be installed will be very corrosive. The polypropylene plate will better resist the corrosive return air circulated through the heat exchanger than a standard aluminum plate.

An evaluation of all of the submitted documentation by EPA's technical review team supports and confirms the City's claim that there are currently no domestic manufacturers that can provide a suitable fixed plate heat recovery ventilator to meet project specifications. The consulting engineer for the City identified two domestic manufacturers in the United States. Neither of the two companies currently manufactures heat recovery units that meet all the project specifications. An independent review of the submitted documentation by EPA's national contractor found four possible domestic manufacturers. However, none of the manufacturers contacted currently provides a product that meets the specifications and project requirements. In addition, the evaluation of the supporting documentation demonstrated that foreign manufactured heat recovery ventilators are available and will be able to meet the proposed project design and specifications.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or curtail entirely projects that are "shovel ready" by requiring potential SRF eligible recipients, such as the City of Lowell, MA, to revise their design standards and specifications. To curtail entirely 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 City establishes both a proper basis to specify a particular manufactured good, and that the domestically manufactured good that is currently available does not meet the design specifications 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 Lowell, MA 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 non-domestically manufactured fixed plate heat recovery ventilator documented in City's waiver request submittal dated July 14, 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: October 8, 2010.

**Ira W. Leighton,**

Acting Regional Administrator, EPA Region 1—New England.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Docket Number NIOSH-220]

#### Components for Evaluation of Direct-Reading Monitors for Gases and Vapors and Addendum

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of draft publication available for public comment.

**SUMMARY:** The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the following draft publication for public comment. The document and its addendum are entitled, respectively, "Components for Evaluation of Direct-Reading Monitors for Gases and Vapors" and "Addendum to Components for Evaluation of Direct-Reading Monitors for Gases and Vapors: Hazard Detection in First Responder Environments." The draft documents and instructions for submitting comments can be found at: <http://www.cdc.gov/niosh/docket/review/docket220>. The document expands the 1995 method development and evaluation experimental testing methods to direct-reading monitors for gases and vapors. These *Components* are provided for laboratory users, consensus standard setting bodies, and manufacturers of direct-reading instrumentation and are compatible with the Instrumentation, Systems, and Automation Society guidelines. The addendum to the document expands the applicability of the *Components* by presenting methods to be used in evaluating direct-reading monitors for hazard detection in First Responder environments. The 1995 document, entitled "Guidelines for Air Sampling and Analytical Method Development and Evaluation," can be viewed at: <http://www.cdc.gov/niosh/docs/95-117/>.

This guidance does not have the force and effect of the law.