

(possibly on EPA's Web site). Would you find this approach more or less useful than the current process?

2. Do you foresee any problems/issues with reviewing EISs that are made available only on the Internet?

3. In your opinion, how long should EISs remain accessible to the public?

Please submit your responses to the above questions to: Robert Hargrove, Director, NEPA Compliance Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, (2252A), Washington, DC 20460; or [hargrove.robert@epa.gov](mailto:hargrove.robert@epa.gov), by COB February 28, 2011.

Dated: January 11, 2011.

**Susan E. Bromm,**

*Director, Office of Federal Activities.*

[FR Doc. 2011-758 Filed 1-13-11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9252-9]

### Notice of a Project Waiver of Section 1605: (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Inland Empire Utilities Agency

**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(a) 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 Inland Empire Utilities Agency (IEUA), a Clean Water State Revolving Fund (CWSRF)/ARRA loan recipient, for the purchase of Air Release Vacuum (ARV) Valves manufactured by A.R.I. in Israel, for Project #5176-140 funded by the California CWSRF/ARRA Loan #08-851. This is a different project than Project #5176-110/5176-130 which was previously issued a waiver for this same product. The IEUA indicates that the design for the Church Street lateral project includes A.R.I. valves, which are the standard air relief structures used within the regional pipeline system, and that currently there is not a comparable domestic equivalent that meets the IEUA 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 project-specific circumstances. The Assistant Administrator of the Office of Administration and Resources Management has concurred with this decision to make an exception under section 1605(b)(2) of ARRA.

**DATES:** *Effective Date:* November 30, 2010.

**FOR FURTHER INFORMATION CONTACT:** Abimbola Odusoga, Environmental Engineer, Water Division, Infrastructure Office (WTR-4), (415) 972-3437, U.S. EPA Region 9.

**SUPPLEMENTARY INFORMATION:** In accordance with ARRA Sections 1605(c) and 1605(b)(2), EPA hereby provides notice it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111-5, Buy American requirements, to the IEUA for the acquisition of the ARV valves manufactured in Israel by A.R.I. The head of each federal agency is authorized to issue project waivers pursuant to Section 1605(b) of ARRA. Section 1605(a) of the ARRA requires that none of the funds appropriated or otherwise made available by the ARRA 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. Pursuant to Section 1605(b), a waiver from this requirement may be provided if EPA determines: (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.

A Delegation of Authority Memorandum was issued by the EPA Administrator on March 31, 2009 which provided EPA Regional Administrators with the authority to issue waivers to Section 1605(a) of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual recipients of ARRA financial assistance.

The IEUA provides drinking water and waste water treatment services to municipalities in the Chino Basin. The Church Street lateral project consists of approximately 4,200 linear feet of 12-inch diameter recycled water pipeline that will convey recycled water to serve customers in the 1430 and 1630 pressure zones. Project specifications

provided by the applicant state that acceptable products are A.R.I. Flow Control Accessories, Ltd. (Model D-060) or an approved equal.

The functional justification for these specifications advanced by the IEUA was that the IEUA had, in years prior to the enactment of ARRA, made the ARI valves their standard air relief structures used within the regional pipeline system based on the IEUA's determination that these valves had a superior design, functionality, and ease of maintenance. Specifically:

- ARI combination valves (D-060's) have the air release on the top of the valve, whereas alternative valves have the air release on the side. A side release creates an internal air pocket on the valve, which allows the rubber seal for the vacuum component to dry out and leak over time.

- The 316SS float for the ARI vacuum component stops against a 316SS ring. The alternative valves have a float that stops against a flat rubber seal on the top of the valve, and constant pounding during closure tends to crack the seal and cause leaks.

- The ARI valves are half the weight and size of the alternative valves, which makes installation and maintenance easier. Also, as the valves are smaller, the enclosures for the valves are less expensive.

The consequences of finding the IEUA's specifications not justified would include the following:

- Additional design costs would be incurred to change all ARV valves, including re-calculating the size of the valves based on the competitors design criteria, modifying valve and enclosure details, and modifying the pipeline profiles to accommodate larger valves. Alternative ARV valves that must be buried would require lowering the pipeline depth several feet on each side of the valves to accommodate a deeper valve vault.

- Construction costs would be higher due to the increase in valve sizes, larger enclosures, and a deeper pipeline. The pricing through the change order process would be significantly higher than prices for a competitive bid. The cost for the material and installation of the valves is approximately \$198,708. If the ARI valves are replaced with alternative valves, the estimated cost for the material and installation would be approximately \$100,000 more.

- IEUA staff would have to be trained on the different types of valves installed and additional spare parts would need to be ordered and stocked. Since the IEUA has moved forward with implementing the ARI valves as the

standard air relief structure, all valves that do not meet this standard would need to be replaced.

Use of alternative valves that do not meet the IEUA's specifications would thus require a substantial redesign of, delay in, and higher costs for the project. Because of the IEUA's current, extensive installations of ARI valves, the use of alternative, incompatible valves would impose continuing high costs into the future to change spare parts and staff training in operations and maintenance, as well as in inferior performance of the alternative valves. Procurement of alternative valves would be inconsistent with basic principles of sustainable infrastructure and effective asset management that EPA has consistently promoted. For all these reasons, EPA finds that the IEUA's specifications for these ARV valves were justified.

EPA also conducted research to find potential domestic manufacturers who can supply ARV valves that meet IEUA's technical specifications. Five domestic manufacturers of ARV valves were identified by the applicant. EPA's national contractor contacted the domestic manufacturers and inquired as to whether their products could meet the IEUA's specifications. All five manufacturers indicated that they could provide similar products, but could not meet all of the IEUA's specifications, particularly with regard to manufacturing materials and product design.

Based on these findings, EPA concludes the IEUA's claim that there are no known American manufacturers of ARV valves meeting the IEUA's specifications is supported by the available information.

The April 28, 2009 EPA Memorandum for implementation of the ARRA Buy American provisions of P.L. 111-5, states the quantity of iron, steel, or relevant manufactured good is "reasonably available" if it is available at the time and place needed, and in the proper form or specification as specified in the project plans and design. The IEUA's waiver request articulates a reasonable and appropriate basis for choosing the type of technology it chose for this project in environmental objectives and performance specifications. Further, it provides sufficient documentation to conclude the relevant manufactured goods are not produced in the United States of a satisfactory quality to meet its technical specifications. The IEUA has incorporated specific technical design specifications for the proposed project based on their needs and provided information to the EPA indicating there

are currently no ARV valves manufactured in the United States that have equivalent product specifications. The IEUA has also provided certification indicating there are no systems of comparable quality available from a domestic manufacturer to meet its specifications. Based on additional inquiry by EPA's national contractor, there do not appear to be other ARV valves available to meet the IEUA's specifications.

EPA has also evaluated IEUA's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance 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, there are no U.S. manufacturers that meet IEUA's project specification for these ARV valves. The waiver request was submitted after the contract date due to a realignment of a portion of the project which was discovered in April, 2010. This realignment led to a project redesign which wasn't completed until May 26, 2010, thus leading to the waiver request on July 15, 2010. Although it was known that ARV valves would be needed for this project, it was unknown how many would be needed and the associated cost until after the realignment. There is no indication that IEUA 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 IEUA's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by IEUA and no loss to the government due to the late request.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure

construction, not to delay shovel ready projects by requiring entities, like the IEUA, to revise their design and potentially choose a more costly and less efficient project. The imposition of ARRA Buy American requirements on such projects eligible for CWSRF assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. Further delay of this project would contravene the most fundamental economic purposes of the ARRA: To create or preserve jobs in the United States.

The EPA Region 9 Water Division, Office of Regional Counsel, EPA's Buy American consultant, and EPA's Office of Administration and Resource Management have reviewed this waiver request and have determined the supporting documentation provided by the IEUA is sufficient to meet the criteria listed under ARRA Section 1605(b) (2) and the EPA April 28, 2009, memorandum for implementation of ARRA Buy American provisions of Public Law 111-5.

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 IEUA is hereby granted a waiver from the Buy American requirements of Sections 1605(a) of Public Law 111-5, for the purchase of the A.R.I. valves, specified in the IEUA's request of July 21, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under Section 1605(b)(2).

**Authority:** Public Law 111-5, Section 1605.

Dated: November 30, 2010.

**Jared Blumenfeld,**

*Regional Administrator, EPA Pacific Southwest, Region 9.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9252-8]

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Lake County Special Districts

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

**ACTION:** Notice.

**SUMMARY:** The EPA is hereby granting a project waiver of the Buy American