

Issued on: March 8, 2011.

Al Armendariz,

Regional Administrator, U.S. Environmental Protection Agency, Region 6.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL -9288-6]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Amarillo, TX

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 City of Amarillo, Texas ("City") for the purchase of a 5 horsepower (HP) non-clog submersible pump, with NSF compliant wetted parts and appurtenances. As the pump will be submersed in the drinking water wet well, the project specification requires that all wetted components of the pump be manufactured with NSF 61 compliant materials. The 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances is manufactured by foreign manufacturers and no United States manufacturer produces an alternative that meets the City'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 City 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 a 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances not manufactured in America, for the

proposed project being implemented by the City.

DATES: *Effective Date:* March 8, 2011.

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 City for the acquisition of a 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances. The City has been unable to find an American made submersible pump with NSF 61 compliant wetted components to meet its specific requirements.

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 5 HP non-clog submersible pump is part of a high service pump and transfer station at the City's Osage Treatment Plant, which pumps water out of the wet well of the City's water treatment plant. Because the pump will be submerged in potable drinking water, the project specifications require the pump's components that are in contact with the water in the wet well be constructed of materials that are NSF 61 Standard compliant. In addition, the project specifications require the following materials to be used for given pump parts.

- (1) Cast iron: The pump case, motor housing, and impeller.
- (2) Stainless steel: Pump shaft (wetted portion), guide rails, lifting chains, fasteners, and metal seal parts.
- (3) Viton (a fluoropolymer): O-rings.
- (4) Silicon-carbide: Seals.

The City clarified that NSF 61 compliance standards supersede certain components of the project specifications. In particular, the pump case, motor housing, and impeller are required to be constructed of stainless steel, and the seals are required to be fabricated of Viton or EPDM polymer. The City also indicated that the pump is not required to be NSF 61 Standard certified, but is required to have wetted components constructed of materials such as stainless steel that would not leach hazardous materials into the drinking water. The specifications also identified four acceptable manufacturers: Flygt, Fairbanks Morse, Wilo EMU, and Hydromatic. The City contacted all four manufacturers and confirmed that they could not provide a pump manufactured in the U.S. that meets the project specifications.

Based on additional research conducted by EPA Region 6, there does not appear to be any domestic 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances that would meet the City's technical specifications. EPA's national contractor prepared a technical assessment report based on the waiver request submittal. The report confirmed the waiver applicant's claim that there is no American-made 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances.

EPA has also evaluated the City's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 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 the City's project specification for this 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances. The waiver request is

submitted after the contract date because the specification in the contract documents for this submersible pump named four U.S. manufacturers as potential bidders. It was unknown at the time that these four U.S. manufacturers could not completely meet the Buy American provision because the specification required the pump be completely constructed of NSF approved materials. This situation resulted from the lack of reasonably foreseeable circumstances, since the pump manufacturers originally assumed they could meet the specification before the bid of this project. There is no indication that the City 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 the City's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by the City and no loss by the government due to the late request.

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 City has incorporated specific technical design requirements for installation of pump in its potable drinking water system. Therefore, it meets the requirements of the "satisfactory quality" criterion for requesting a waiver from the Buy American provisions of Public Law 111-5.

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 utilities, such as the City, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

The Region 6 Water Quality Protection Division has reviewed this waiver request, and has determined that

the supporting documentation provided by the City is sufficient to meet the criteria listed under ARRA, Section 1605(b), Office of Management and Budget (OMB) regulations at 2 CFR 176.60-176.170, and in the April 28, 2009, memorandum, Implementation of Buy American provisions of Public Law 111-5, the "American Recovery and Reinvestment Act of 2009." The basis for this project waiver is the authorization provided in ARRA, Section 1605(b)(2). 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 City's technical specifications, a waiver from the Buy American requirement is justified.

EPA headquarters' March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of 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 is hereby granted a waiver from the Buy American requirements of ARRA, Section 1605(a) of Public Law 111-5 for the purchase of a 5 HP non-clog submersible pump, with NSF compliant wetted parts and appurtenances, using ARRA funds, as specified in the City's request. This supplementary information constitutes the detailed written justification required by ARRA, Section 1605(c), for waivers "based on a finding under subsection (b)."

Authority: Pub. L. 111-5, section 1605.

Dated: March 8, 2011.

Al Armendariz,
Regional Administrator, U.S. Environmental Protection Agency, Region 6.

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FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 21, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this

opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501-3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 31, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418-0214. For additional information, contact Judith B. Herman, OMD, 202-418-0214 or e-mail judith-b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0805.

Title: Section 90.527, Regional Plan Requirements; Section 90.523, Eligibility; and Section 90.1211, Regional Plan Shared Use of 4.9 GHz.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 20,516 respondents, 20,516 responses.

Estimated Time per Response: .5 hours—200 hours.