

78 inches in diameter. The waiver request was submitted after the contract was signed due to the large size of the project, which led to Wayne County not being made aware that there are no domestic equivalents for the PVC repair sleeves in question until after the contract was signed. There is no indication that Wayne County 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 Wayne County's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by Wayne County and no loss by the government due to the late request.

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 loan recipients such as Wayne County 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.

EPA has reviewed this waiver request and has determined that the supporting documentation provided by Wayne 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 in order to meet Wayne 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, Wayne County is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of Link-Pipe PVC products in various pipe diameters using ARRA funds as specified in the community's request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers "based on a finding under subsection (b)."

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

Dated: February 3, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011-16389 Filed 6-28-11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9426-7]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Metropolitan Council Environmental Services of St. Paul, MN (MCES)

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 MCES of St. Paul, Minnesota, for the purchase of four combination air release/vacuum valves (ARVs) to prevent failure or blockage of the South St. Paul Forcemain (pressure pipe) located in St. Paul, Minnesota. This is a project-specific waiver and it 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. These ARVs, which are manufactured in Israel, meet MCES's performance specifications and requirements. The Regional Administrator is making this determination based on the review and recommendations of EPA Region 5's Water Division. MCES 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 four combination ARVs for the South St. Paul Forcemain project that may otherwise be prohibited under Section 1605(a) of the ARRA.

DATES: *Effective Date:* June 29, 2011.

FOR FURTHER INFORMATION CONTACT:

Andrew Lausted, SRF Program Manager (312) 886-0189, or Joseph Williams, Office of Regional Counsel, (312) 886-6631, 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, Buy American requirements, EPA hereby provides notice that it is granting a project waiver to MCES of St. Paul, Minnesota, for the South St. Paul Forcemain project, for the acquisition of four combination ARVs that are manufactured in Israel.

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 prevent failure or blockage of the South St. Paul Forcemain pressure pipe. MCES started using these particular ARVs seven years ago and they have become their standard air release vacuum valve. They were selected as their standard because of their light weight, ease of installation and maintenance, simplicity of operation, excellent performance, and low cost. MCES'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 combination ARVs. Based on the investigation, several companies were found to manufacture the required ARVs, but none were able to meet all of the criteria in the project specifications, namely a conical body shape, a spring-loaded joint between the stem and the upper float, and a 316 SAE stainless steel body. Therefore, MCES contends that there is no domestic product of satisfactory quality available.

EPA’s national contractor prepared a technical assessment report 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 four combination ARVs necessary for this project are not manufactured in the United States, and no other U.S. manufactured product can meet MCES’s project performance specifications and requirements.

EPA has also evaluated MCES’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 MCES’s project specifications for the purchase of four combination ARVs to prevent failure or blockage of the South St. Paul Forcemain (pressure pipe). The waiver request was submitted after the contract was signed due to the large size of the project. With the nature of large projects having numerous items in the specifications, it is difficult and time consuming to know the origin of every single item, until shop drawings are submitted or it comes time to purchase an item. Therefore, MCES was not aware that there are no domestic equivalents for the ARVs in question until after the contract was signed. There is no indication that MCES 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 MCES’s waiver request, a foreseeable late request, as though it had been timely made since there is no gain by MCES and no loss by the government due to the late request.

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 loan recipients such as MCES 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.

EPA has reviewed this waiver request and has determined that the supporting documentation provided by MCES 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 MCES’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, MCES is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of four combination ARVs using ARRA funds as specified in the community’s request. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers “based on a finding under subsection (b).”

Authority: Public Law 111–5, section 1605.

Dated: May 9, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–16386 Filed 6–28–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–9426–2]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Metropolitan Council Environmental Services of St. Paul, MN (MCES)

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 the Metropolitan Council Environmental Services (MCES) of St. Paul, Minnesota, for the purchase of one Parkson StrainPress SC–4 pressurized in-line sludge screen to process gravity thickened primary sludge at its Blue Lake Wastewater Treatment Plant located in Shakopee, Minnesota. This is a project-specific waiver and it only applies to the use of the specified product for the ARRA funded project being proposed. Any