

appear to be any American-manufactured ORC turbine generator available to meet the ACSD's project design specifications for its North Plant WWTP. The ACSD's submission clearly articulates entirely functional reasons for its technical specifications, and has provided sufficient documentation that the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantity and of a satisfactory quality to meet its technical specifications.

The April 28, 2009, EPA Headquarters 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 the 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," and *satisfactory quality* as "the quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs."

Based on additional research conducted by the State Revolving Fund Program Team of the Division of Environmental Planning and Protection and to the best of the Region's knowledge at the time of the review, there do not appear to be other ORC turbine generators manufactured domestically that would meet the ACSD's technical specifications.

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 potential SRF eligible recipients, such as the ACSD, to revise their design standards and specifications. 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 the fundamental purpose of the ARRA, which is to preserve and create jobs and promote economic recovery.

The State Revolving Fund Program Team has reviewed this waiver request and has determined that the supporting documentation provided by the ACSD establishes both a proper basis to specify the particular good required and that the manufactured good was not available from a producer in the United States to meet the design specifications for the proposed project. The information provided is sufficient to meet the criteria listed under Section

1605(b), OMB's regulation at 2 CFR 176.100, and in the EPA Headquarters April 28, 2009, Memorandum, "Implementation of Buy American provisions of Public Law 111-5, the 'American Recovery and Reinvestment Act of 2009':" 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). 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 ACSD's technical specifications, a waiver from the Buy American requirement is justified.

The Administrator's 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 ACSD is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of an ORC turbine generator from any of the following foreign manufacturers: Turboden (Italy), Ormat Technologies, Inc. (Israel), or Adoratec (Germany) to meet the ACSD's technical design specifications for its North Plant WWTP waste heat recovery and on-site electricity generation project using ARRA funds, as specified in the ACSD's request of September 30, 2009, and as revised on October 28, 2009. 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: January 19, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010-2253 Filed 2-2-10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9108-8]

Notice of a Regional Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the West Milford Township Municipal Utilities Authority (WMTMUA), New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 2 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 WMTMUA, New Jersey, for the purchase of a membrane bio-reactor (MBR) unit that uses flat-plate membrane cartridges. The WMTMUA's proposed upgrade of its Awosting Sewage Treatment Plant to a MBR facility requires utilizing flat-plate membrane cartridges. No United States manufacturer produces a MBR unit with flat-plate membrane cartridges that meet the specifications for the project. The only MBR unit that incorporates the flat-plate membrane cartridges and meets the WMTMUA's specifications is manufactured in Japan by Kubota. This is a project specific waiver and only applies to the use of the identified 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 project specific circumstances. The Regional Administrator is making this determination based on the review and recommendations of the Region 2 State Revolving Fund Program Team. The WMTMUA 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 a Kubota MBR unit that uses flat-plate MBR membrane cartridges for the ARRA-funded project being implemented by WMTMUA, New Jersey.

DATES: *Effective Date:* January 19, 2010.

FOR FURTHER INFORMATION CONTACT: Jane Leu, Environmental Engineer, (212) 637-3815, State Revolving Fund

Program Team, Division of Environmental Planning and Protection, U.S. EPA, 290 Broadway, New York, NY 10007.

SUPPLEMENTARY INFORMATION:

In accordance with ARRA Section 1605(c) and pursuant to Section 1605(b)(2) of Public Law 111-5, Buy American requirements, the EPA hereby provides notice that it is granting a project waiver to the WMTMUA, New Jersey, for the acquisition of a MBR unit that utilizes flat-plate membrane cartridges manufactured in Japan by Kubota, to meet the WMTMUA's technical design specifications for its sewage treatment plant upgrade 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 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 WMTMUA has requested a waiver from the Buy American Provision for the purchase of a MBR unit that incorporates flat-plate membrane cartridges manufactured by Kubota of Japan, as part of WMTMUA's proposed upgrade of its Awosting Sewage Treatment Plant to a MBR facility. The MBR unit is comprised of flat-plate membrane cartridges, membrane blowers, fine screens, and other auxiliary components integral to the efficient operation of the wastewater treatment process. The rationale behind WMTMUA's design specification requiring flat-plate MBR membrane cartridges was based on a comprehensive engineering evaluation and assessment of the plate membrane technical data analysis. The specifications required that the MBR membranes meet design removal standards for conventional pollutants and an anticipated, stringent Total Phosphorus effluent limit resulting from a Total Maximum Daily Loads (TMDL) for the receiving waters. Another criterion used was the demonstrated installation and operation of the MBR

technology. During the WMTMUA's design research process, information was obtained from facility operators at installations of similar size with several years of operating experience. No American manufacturer of MBR units had a large enough installed base of MBR membranes to demonstrate successful operation of flat-plate MBR membrane cartridges. The Kubota MBR unit was determined to meet the sizing dimensions and design of the WMTMUA sewage treatment plant upgrade project.

The information provided to EPA by the WMTMUA was confirmed through a technical review by EPA's national contractor of the submitted documentation. To the best of EPA's knowledge at this time, there does not appear to be any American-manufactured MBR unit utilizing flat-plate MBR membrane cartridges available that meets the WMTMUA's project design specifications for its proposed sewage treatment plant upgrade. The WMTMUA provided a list of membrane manufacturers with recognized experience in treating wastewater, with both types of membranes, hollow fiber and flat plates considered. The WMTMUA's technical analysis included an "equivalent" specification, to allow the bidder to utilize any one of the various types of membranes (geometry of tankage for both the membranes and the supporting process tanks) in meeting the design specifications. No single domestic manufacturer was able to meet the required geometry of the tankage and supporting process tanks, as each manufacturer requires its own particular geometry. The WMTMUA's submission clearly articulates entirely functional reasons for its technical specifications, and has provided sufficient documentation that the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantity and of a satisfactory quality to meet its technical specifications.

The April 28, 2009, EPA Headquarters 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 the 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," and *satisfactory quality* as "the quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs."

Based on additional research conducted by the State Revolving Fund Program Team of the Division of Environmental Planning and Protection and to the best of the Region's knowledge at the time of the review, there does not appear to be any American-manufactured MBR unit utilizing flat-plate MBR membrane cartridges that meets the WMTMUA's exact technical specifications.

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 potential State Revolving Fund eligible recipients, such as the WMTMUA, to revise their design standards and specifications. 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 the fundamental purpose of the ARRA, which is to preserve and create jobs and promote economic recovery.

The State Revolving Fund Program Team has reviewed this waiver request and has determined that the supporting documentation provided by the WMTMUA establishes both a proper basis to specify the particular good required and that the manufactured good was not available from a producer in the United States to meet the design specifications for the proposed project. The information provided is sufficient to meet the criteria listed under Section 1605(b), OMB's regulation at 2 CFR 176.100, and in the EPA Headquarters April 28, 2009, Memorandum, "Implementation of Buy American provisions of Public Law 111-5, the 'American Recovery and Reinvestment Act of 2009':" 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). 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 WMTMUA's technical specifications, a waiver from the Buy American requirement is justified.

The Administrator's 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 WMTMUA is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of a Kubota MBR unit that incorporates flat-plate MBR membrane cartridges using ARRA funds, as specified in the WMTMUA's request of June 5, 2009. 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: January 19, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010-2252 Filed 2-2-10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9109-3]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Richland (the City), WA for the Purchase of AeroStrip® Fine Pore [Bubble] Diffusers Manufactured Outside of the United States Under the Section 1605 Waiver Authority Based on the Conclusion That 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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Acting Regional Administrator of EPA Region 10, is hereby granting a waiver of the Buy America 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 for the purchase of AeroStrip® Fine Pore Diffusers supplied by Treatment Equipment Company in Bellevue, Washington and manufactured in Austria. 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 applicant indicates that AeroStrip® Fine Pore Diffusers are the only feasible equipment to retrofit Richland's existing Waste Water Treatment Facility aeration basins. The AeroStrip® Fine Pore Diffusers are only manufactured in Austria. No other fine pore diffusers are available or capable of meeting the aeration process design requirements. The Acting Regional Administrator is making this determination based on the review and recommendations of the Grants & Strategic Planning Unit. The City has provided sufficient documentation to support their request.

DATES: *Effective Date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT:

Bryan Fiedorczyk, CWSRF ARRA Program Analyst, Grants & Strategic Planning Unit, Office of Water & Watersheds (OWW), (206) 553-0506, U.S. EPA Region 10 (OWW-137), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

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 acquisition of AeroStrip® Fine Pore Diffusers supplied by Treatment Equipment Company in Bellevue, Washington and manufactured in Austria. The applicant indicates that AeroStrip® Fine Pore Diffusers are the only feasible equipment to retrofit Richland's existing Waste Water Treatment Facility aeration basins. The AeroStrip® Fine Pore Diffusers are only manufactured in Austria. No other fine pore diffusers are available or capable of meeting the aeration process design 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 is 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.

This ARRA-funded project involves upgrading the aeration system in one of the Waste Water Treatment Facility's existing aeration basins, AB2 (replacement of an existing mechanical aeration system with a fine bubble strip membrane diffuser aeration system) and installation of additional fine bubble strip membrane aeration diffusers in the facility's other existing aeration basin, AB1. This project will thus complete the facility's aeration system upgrade originally designed (using proprietary strip membrane diffusers) to replace the mechanical aeration systems in the facility's two aeration basins. Important objectives of the project's improvements are to reduce energy consumption by more than 70% and reduce the discharge of suspended solids, biochemical oxygen demand and nitrogen into the Columbia River. Further requirements of the project dictated by the constraints of the existing facility include (1) Retrofit installation in the existing sloped wall basins, (2) compatibility with the aeration diffusers installed in a previous system upgrade, and (3) limiting the size of the associated aeration system blower upgrade to the available capacity of the facility's existing electrical system infrastructure. The objectives described above reflect appropriate and desirable performance upgrades central to the function of the facility, and are a justifiable basis for specifications to achieve those objectives. Similarly, the requirements for compatibility with various features of the existing facility are justified as appropriate and necessary specifications for a retrofit project.

The applicant states that the engineer for the original project design evaluated fine bubble diffusers available from four manufacturers, and concluded that the AeroStrip® diffusers were the best selection for the project because:

The project would require smaller aeration blowers since the AeroStrip® diffusers:

○ Generate smaller bubbles (creating a higher oxygen transfer surface area and efficiency).

○ Operate at lower air flow per surface area to provide the required dissolved oxygen concentration to the wastewater under aeration.

○ Use lower minimum air flow to open the pores of the diffuser.

The smaller aeration blower requirement resulting from the use of the AeroStrip® diffusers allows the blower equipment to be implemented without requiring an upgrade to the facility's electrical power system.