

aspects of the method should be directed to the applicant.

**Jewel F. Morris,**

*Acting Director, National Exposure Research Laboratory.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9476-9]

### 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 Airway Heights (the City), Washington

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

**ACTION:** Notice.

**SUMMARY:** The Regional Administrator of EPA Region 10 is hereby granting a waiver from 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 City for the purchase of six Carrier split ductless air conditioning (AC) units, manufactured in Mexico and South Korea. This is a project specific waiver and only applies to the use of the specified products 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 waiver applicant states that AC systems are required to provide a constant temperature for the electrical control room as part of the City's project to upgrade of the wastewater treatment plant. The City's consulting engineer requested the Carrier AC system products based on specifications on the project plans for six Carrier split ductless AC units. The City has provided sufficient documentation to support their request. This action allows the installation of the six specified ductless AC units as noted in the City's June 22, 2011, request and additional follow up documentation.

**DATES:** *Effective Date:* September 21, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Michelle Tucker, CWSRF Coordinator, Grants and Strategic Planning Unit, Office of Water & Watersheds (OWW), (206) 553-1414, 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(a) of Public Law 111-5, Buy American requirements, to the City for purchase of six non-domestic manufactured Carrier split ductless (AC) units. The City requires the AC systems to provide a constant temperature for the electrical control room as part of the City's project to upgrade of the wastewater treatment plant. The City planned to purchase and install the identified six ductless split AC units and one ducted unit from Carrier. The units are needed to keep the motor starters, control equipment, power transformers, circuit breakers, and other electronic controlling equipment at the wastewater treatment plant from overheating. The City's consultant conducted due diligence and research with five product suppliers of AC systems in the Eastern Washington area. The City's consultant concluded that there are no domestically produced ductless AC systems that could meet the product specifications.

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 OMB regulations 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 regulation, 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 requirement for ductless split AC units. The waiver request was submitted after contract signing; however, it was reasonably unforeseeable. ARRA Buy American documentation for the AC units was not supplied with the initial submittal in January 2010. Pending re-submittal of the documentation, the City discovered that the units had a plate stamped "Made in Mexico" in September 2010. The City checked with

the Department of Ecology and EPA to determine if the units were eligible under the Section 1605(d) trade agreement exception; EPA confirmed the units were not eligible for that exception. The City spent several months coordinating back and forth with the manufacturer and the contractor to explain that they were not covered by any international trade agreements and that an alternate means of compliance was necessary. The drafting of the project-specific availability waiver began in March 2011. The City delayed submitting the waiver request to investigate a potential domestic manufacturer (Enviromaster International) lead, which ultimately did not work out. Since the City was investigating various means of Buy American compliance through gathering adequate documentation, coordinating with the manufacturer and contractor, and researching potential domestic manufacturers, the circumstance of applying for a waiver after the start of construction was not foreseen. EPA has evaluated this information and will consider the City's waiver request as a timely request since it was reasonably unforeseeable.

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 "satisfactory quality" as the quality of iron, steel or the relevant manufactured good as specified in the project plans and design. The City provided information to the EPA representing there are no current domestic manufacturers of the six ductless split air conditioning units. EPA's contractor reviewed the information provided by the City and determined that City's claim that no domestically manufactured air conditioner units exist that meets the project specifications for the six split ductless AC units is supported by the available information.

Furthermore, the purpose of the ARRA provisions was to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to revise their design and potentially choose a more costly and less effective project. The implementation 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. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA, to create or retain jobs.

The Grants and Strategic Planning Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to establish a proper basis. 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 City’s design specifications.

The 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 assistance 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 manufacturer in the United States, the City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of six Carrier split ductless AC units, manufactured in Mexico and South Korea, for a wastewater treatment plant project specified in the City’s waiver request of June 22, 2011. 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: September 21, 2011.

**Dennis J. McLerran,**  
Regional Administrator, EPA, Region 10.  
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**ENVIRONMENTAL PROTECTION AGENCY**

[FRL–9477–2]

**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 West Monroe, LA**

**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 West Monroe (“the City”) for the purchase of the selected carbon steel pipe fittings and appurtenances (elbows, tees and flanges) to be incorporated in the Sparta Reuse Project—Waste Water Treatment Facility. The required carbon steel pipe fittings and appurtenances are 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 the selected carbon steel pipe fittings and appurtenances not manufactured in America, for the proposed project being implemented by the City.

**DATES:** *Effective Date:* September 26, 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 selected carbon steel pipe fittings and appurtenances (elbows, tees and flanges). The City has been unable to find American made carbon steel pipe fittings and appurtenances to meet its specific water requirements.

Section 1605 of 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 City has provided information to the EPA demonstrating that there are no carbon steel pipe fittings and appurtenances manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specification. The City indicated that of the ten US companies contacted, seven could not meet the requirement to provide the fittings and flanges manufactured from carbon steel sourced from steel mills in the United States. The remaining three companies contacted did not respond to requests for information regarding the sources of metals used in the fabrication of their products.

The project specifications include requirements for the following pipe fittings and flanges:

Description	Quantity	Material	Code standard	Connection type
16-in. STD LR 90o elbow .....	6	Carbon Steel .....	ANSI A234 WPB .....	Butt weld.
20-in. STD LR 90o elbow .....	3	Carbon Steel .....	ANSI A234 WPB .....	Butt weld.
24-in. STD LR 90o elbow .....	16	Carbon Steel .....	ANSI A234 WPB .....	Butt weld.
20-in. STD LR 45o elbow .....	1	Carbon Steel .....	ANSI A234 WPB .....	Butt weld.
8-in. STD TEE .....	42	Carbon Steel .....	ANSI A234 WPB .....	Butt weld.
24-in. STD Raised Face Blind Flange .....	2	Carbon Steel .....	150# ANSI A105 .....	Not applicable.