

plans and design". After extensive research by the design engineer and the VTANR, the system has provided information to the EPA representing that there is currently no other UV disinfection equipment from a domestic manufacturer available to meet the System's exact design 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 utilities, such as the Sharon Elementary School Water System, 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 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 construction must be completed by late August when the students return for the new school year.

EPA's national contractor prepared a technical assessment report dated June 19, 2009 based on the waiver request submitted and supporting documentation. 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. The report confirmed the waiver applicant's claim that NSF Standard 55 Class A UV disinfection equipment of the size specified are not available from a domestic manufacturer.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the Sharon Elementary School Water District 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 product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the System's technical 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, the Sharon, Vermont Elementary School Water System is hereby granted a waiver from the Buy American requirements of section 1605(a) of Public Law 111-5 for the purchase of the specified UV disinfection equipment using ARRA funds as specified in the System's request of June 15, 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: July 17, 2009.

**Ira W. Leighton,**

*Acting Regional Administrator, Region I, New England.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8935-7]

### Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Lewiston, ME Department of Public Services

**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 in sufficient and reasonably available quantities and of a satisfactory quality] to the Lewiston, Maine Department of Public Services (LMDPS) for the purchase of a Hydroslide model DR-400 VN-Vario constant flow regulator. 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. This flow regulator is manufactured outside of the United States by Gabriel Novac & Associates, Inc., a company based in Canada, and meets the LMDPS's technical specifications and requirements. The Acting Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The LMDPS 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 specific constant flow regulator for the proposed project being implemented by the LMDPS that may otherwise be prohibited under Section 1605(a) of the ARRA.

**DATES:** *Effective Date:* July 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Katie Connors, Environmental Engineer, (617) 918-1658, or David Chin, Environmental Engineer, (617) 918-1764, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, One Congress Street, CMU, Boston, MA 02114.

### 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 the Lewiston, Maine Department of Public Services (LMDPS) for the acquisition of a Hydroslide model DR-400 VN-Vario constant flow regulator manufactured outside of the United States by Gabriel Novac & Associates, Inc., a company based in Canada.

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.

This manufactured good will be installed as part of the "Goff Brook Combined Sewer Overflow (CSO) Storage Project" to help reduce combined sewer overflows. Parts for this specific constant flow regulator device are manufactured in Germany, will arrive in several pieces, and require assembly at the job site prior to installation at a total cost of \$14,700. The Hydroslide DR-400 VN-Vario model is a hydraulically-operated flow control regulator that allows for continued discharge to the downstream sewers under normal, dry flow conditions. Under specified wet weather conditions, the mechanical flow control regulator would be activated to divert flows to a separate discharge pipe and storage chamber to help eliminate CSOs. CSOs currently discharge directly to a small brook nearby, and this project is being implemented to minimize those occurrences. The proposed project was designed to accommodate a one year, six-hour rain event (approximately 2.04 inches over a 6-hour period), which is based on historical rain data from the area.

As represented by the LMDPS, the project site is located in a remote rural area with limited space and no available electrical power. As a result, constant flow regulators with modulating sluice gates requiring electrical service cannot be installed for this project. The Hydroslide model DR-400 VN-Vario constant flow regulator, which does not require any electricity, maintains a preset flow rate at varying water levels ranging from 0 to 10 feet on the upstream side, with an adjustable flow  $\pm 30\%$  from the above ground. It is operated by use of a float to control a sliding plate to reduce the outflow area as the water level rises. This allows full use of the storage chamber while maintaining a constant flow to the 18 inch outlet pipe.

According to the LMDPS, there are only two other non-electric manufacturers of regulators for CSO flow control, one foreign and one domestic. The only domestic alternative is not feasible for several reasons: (1) The flow rate is not adjustable; (2) the opening is 2½ inches smaller, making it more likely to be plugged; and (3) it does not reach its peak flow until the water level in the tank is at its peak and therefore would require a larger storage volume in order to capture the same size design storm of a one year, six hour rain event. As a result, the domestic

alternative would not be able to meet the proposed design specifications.

If the footprint of the project needs to be expanded to increase the storage volume to accommodate the domestic alternative, additional wetlands would be required to be filled. If the storage volume was not expanded, the tank would overflow more frequently and discharge a larger volume of combined sewer effluent. This would result in a large reduction in the environmental benefit for which the tank is being constructed and would not meet the level of abatement control in the CSO Long Term Control Plan approved by the State of Maine.

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." Based on the information provided to EPA and to the best of our knowledge at this time, there do not appear to be other constant flow regulators manufactured in the United States available to meet the LMDPS's exact technical specifications and requirements. The Hydroslide flow regulator is self-operating, requires low maintenance, and does not use electricity. There do not appear to be any American manufacturers that make a comparable product.

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 LMDPS 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 construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

EPA's national contractor prepared a technical assessment report dated June 19, 2009 based on the waiver request submitted. 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. The report confirmed the waiver applicant's claim

that there are no comparable non-electric domestic products that can handle the design storm event without overflow, and can be installed at the proposed site without requiring expanding the necessary storage volume.

The Municipal Assistance Unit has reviewed this waiver request and has determined that the supporting documentation provided by the LMDPS 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 product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the System's technical 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, the Lewiston, Maine Department of Public Services is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of a constant flow regulator using ARRA funds as specified in the System'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:** Public Law 111-5, Section 1605.

Dated: July 17, 2009.

**Ira W. Leighton,**

*Acting Regional Administrator, Region I, New England.*

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