

**ADDENDUM #3
BID NO. 2009-T**

Issue Date: August 26, 2009

Project: South Columbia County Regional Wastewater Treatment Plant

Notice to all bidders is hereby given that the following modification is made to the Request for Bids referenced above:

“Buy American” Provisions

All bidders are hereby notified that the successful bidder shall be required to comply with the “Buy American Provisions of P.L. 111-5, the “American Recovery and Reinvestment Act of 2009””. Guidelines for the Implementation of these provisions and a sample of the required “Buy American Certification” are included with this addendum. Each bidder shall familiarize themselves with these provisions and implementation guidelines prior to the submission of their bid.

Each bid submitted in response to this Request for Bids shall include an acknowledgement of this addendum.

BUY AMERICAN CERTIFICATION

Section 1605 of the American Recovery and Reinvestment Act states that:

“None of the funds appropriated or otherwise made available by this Act may be used for a project 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.”

To meet this requirement, the undersigned hereby certifies that all of the material, equipment and accessories which are to be incorporated into the (Name of Construction Contract) to be partially funded by monies from the American Recovery and Reinvestment Act, has been manufactured from domestic construction material as defined by 40 CFR 35.936-13(D).

Name of Contractor

Date

Signature of Authorized Official

Title



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

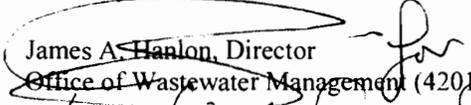
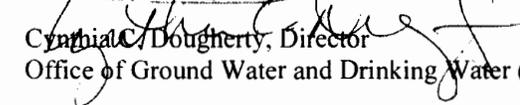
OFFICE OF
WATER

ARRA 09-1

04/28/2009

MEMORANDUM

SUBJECT: Implementation of Buy American provisions of P.L. 111-5, the "American Recovery and Reinvestment Act of 2009"

FROM:  James A. Hanlon, Director
Office of Wastewater Management (4201M)
 Cynthia C. Dougherty, Director
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors
Regions I - X

P.L. 111-5, the "American Recovery and Reinvestment Act of 2009" (ARRA), provides significant levels of funding for States to finance high priority infrastructure projects needed to ensure clean water and safe drinking water. The Act also includes "Buy American" provisions in section 1605 that require Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients of these ARRA funds to use domestic iron, steel and manufactured goods that are produced in the United States.

EPA's foremost expectation is that assistance recipients will use American iron, steel and manufactured goods throughout their ARRA-funded projects. Section 1605 also, however, sets forth certain circumstances under which a federal agency may determine to waive Buy American requirements. In addition, Section 1605 requires the Buy American requirements to be applied consistent with U.S. obligations under international agreements. That means that where a procurement is covered by an international agreement, the Buy American requirement would not be applied to the countries that are subject to the relevant agreement(s). The approach described below explains how EPA will implement these provisions.

The legislative history and Congressional intent expressed in the record for the ARRA make clear that the priority of Congress is to provide capital funding to projects as quickly as possible to create jobs and stimulate both local and national economies. In addition, the ARRA also includes other specific requirements like the Buy American

provision of section 1605 and the requirement that all water infrastructure projects be under contract or under construction by February 17, 2010. EPA's intention in developing the approach described here is to effectively and efficiently implement this full range of ARRA requirements.

Implementation

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 manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent. This requirement has been included as a grant condition in all EPA capitalization grants, and will be a condition in all loan and grant agreements provided by States to local recipients.

On April 23, 2009, the Office of Management and Budget (OMB) issued Interim Final Guidance for several aspects of ARRA, including the Buy American Requirement under Section 1605. The full text of this Guidance is at <http://edocket.access.gpo.gov/2009/pdf/E9-9073.pdf>. Definitions herein have incorporated the relevant text from the OMB Guidance, and the term and condition specified in the OMB Guidance at 176.140 (page 18454) will be incorporated as an award term of ARRA grants from EPA.

In order to implement the Buy American provisions of the ARRA, EPA has developed an approach to allow for effective and efficient implementation to allow projects to proceed in a timely manner. The framework described below will allow assistance recipients to apply for waivers directly to EPA. Pursuant to the ARRA, EPA has the responsibility to make findings and determinations as to the issuance of waivers to the Buy American provisions.

With regard to the requirement to adhere to U.S. obligations under international agreements, based on discussions with OMB officials and OMB's "Updated Implementation Guidance," this provision only applies to direct procurement by the entities listed in the appendix of OMB's Interim Final Guidance or the Federal government, and does not apply to procurement initiated by local entities (SRF assistance recipients), unless they are listed in the appendix.

Definitions

The following terms are critical to the interpretation and implementation of the Buy American provisions of the ARRA and apply to the process described in this memorandum:

Steel: An alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Production in the United States of the iron or steel used

in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project. (This and the following definition was drawn from the OMB Guidance of April 3, 2009, at 176.70(a)(2)(ii) and 176.140(a).)

Manufactured Good: “Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been--

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

There is no requirement with regard to the origin of components or subcomponents in manufactured goods, as long as the manufacture of the goods occurs in the United States.

Reasonably Available Quantity: 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.

Satisfactory Quality: The quality of iron, steel, or the relevant manufactured good as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

Step-By-Step Waiver Process

Application by Assistance Recipient

Each local entity that receives ARRA water infrastructure financial assistance is required by section 1605 of the ARRA to use American made iron, steel, and manufactured goods in the construction of its project. However, if it is one of the entities listed in the appendix to Appendix 9 of the OMB Updated Implementing Guidance, it must allow for the use of iron, steel, or manufactured goods from a country covered by a relevant international agreement. If that is not possible, or if the recipient falls under one of the categories below, the recipient may request a waiver. Until a waiver is granted by EPA, the Buy American requirements stand, except as noted above with respect to countries covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the requirements of the ARRA, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron, steel, and manufactured goods. It is essential that the assistance recipient include the ARRA’s Buy American terms in any request for proposals or solicitations for bids, and in

all contracts (see Appendix 3 for sample contract language). The assistance recipient may seek a waiver at any point before, during, or after the bid process if one or a combination of three conditions is met:

1. Iron, steel, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
2. Inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Applying the Buy American requirements of ARRA would be inconsistent with the public interest.

EPA believes that most waivers will likely come forward at two points in a project: first, based on the design where the assistance recipient identifies key materials (iron and steel) or equipment (manufactured goods) that are not produced in sufficient quantities domestically, or, second, after evaluation by prospective bidders and their consultation with suppliers determines that iron, steel, or manufactured goods as required by the design are not produced in sufficient quantities domestically. An assistance recipient could potentially request waivers at either or both points in the project. It is also possible to request a waiver after bids are opened or after construction has initiated. EPA strongly recommends, if a waiver is necessary, initiating the request before construction has initiated.

Consistent with the direction of the OMB Guidance at §176.120, EPA will expect that requests submitted after the signing of the construction contract will include an explanation of why the request was submitted at that late date. Late submissions that are based on the grounds of lack of reasonably foreseeable circumstances that led to the request, where sufficiently documented, will be considered as if timely submitted.

Late requests that are based on grounds that the assistance recipient would be reasonably expected to foresee will, before consideration of the underlying waiver request, be subject to a balancing. This balancing will consider whether the public interest in expeditious construction under ARRA does or does not outweigh the need for full, timely, and good faith compliance with the Buy American provision according to the grounds set forth in ARRA and in applicable federal guidance and information.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron, steel, and manufactured goods needed to complete the project as described in the plans and specifications that may not be available from domestic sources and the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the Regional waiver email address listed in the chart below. Please include all of the information as shown in the checklist in Appendix 1. The Regional office will send a copy to the State contact.

Chart 1

If the assistance recipient is located in...	Send the waiver request to...
Region 1: ME, NH, VT, MA, RI, CT	region1waiver@epa.gov
Region 2: NY, NJ, PR, VI	region2waiver@epa.gov
Region 3: PA, MD, DE, VA, WV, DC	region3waiver@epa.gov
Region 4: NC, SC, KY, TN, AL, MS, GA, FL	region4waiver@epa.gov
Region 5: OH, IN, MI, MN, WI, IL	region5waiver@epa.gov
Region 6: TX, OK, AR, LA, NM	region6waiver@epa.gov
Region 7: IA, KS, NE, MO	region7waiver@epa.gov
Region 8: CO, WY, UT, SD, ND, MT	region8waiver@epa.gov
Region 9: CA, NV, AZ, HI, GU, AS, NMT	region9waiver@epa.gov
Region 10: WA, OR, ID, AK	region10waiver@epa.gov

Participation by State Program

Section 1605 does not authorize a formal role for the States in the waiver process. However, any State may at its discretion undertake functions that can make important contributions to advance the speed, efficiency, and effectiveness of the waiver process.

One such potential contribution State SRF programs may offer is an initial screening of waiver requests, to assess the sufficiency of the information provided by the assistance recipient in order to advance or facilitate review by the EPA Region. To assist the State in this assessment, EPA has provided a checklist (Appendix 1) that provides a framework for examining the documentation presented in support of the waiver request.

A key consideration for States in their decision as to how to participate in the waiver process is that EPA envisions a short time frame for this process – no more than 3 business days may elapse from filing of the waiver application to correspondence from the State to the Region. States wishing to participate actively in the assessment of waiver requests should consult closely with the Regional office to ensure this participation is managed within the overall time frame for the process.

Evaluation by EPA Regional Offices

After receiving an application for waiver of the Buy American provisions, the Regional office must use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver. The checklist provides information to Regions with

regard to a waiver on the basis of unavailability of a product or material, or of substantial cost increases.

In the event that the Regional office in consultation with the Office of Regional Counsel (ORC) finds that adequate documentation and justification has been submitted, the Regional Administrator may grant a waiver to the assistance recipient. In any event, the Region should notify the assistance recipient that a waiver request has been approved or denied no later than 2 weeks from the date of receipt of a complete waiver request. Granting such a waiver is a 5-step process:

1. Evaluation – After receiving an application for waiver of the Buy American provisions, the Regional office must use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
2. Coordination – No later than 3 days prior to the submission of a notification of a proposed waiver approval to the Assistant Administrator for the Office of Administration and Resources Management (OARM) for concurrence, the Region must notify the Cross-Agency Coordination Working Group described below that a waiver review is complete, along with a copy of the proposed notification.
3. Concurrence – Prior to approving a project waiver, the Regional Administrator must obtain the concurrence of the Assistant Administrator for OARM, as required by the Administrator’s March 31, 2009 delegation of approval authority for exceptions (waivers) to the requirements of ARRA section 1605(a). Please send waivers for concurrence to oarmwaivers@epa.gov.
4. Signature of waiver approval by the Regional Administrator – As soon as the waiver is signed and dated, the Region must notify the State and assistance recipient. This should take place no later than 2 weeks after the receipt of a complete waiver request from an assistance recipient.
5. Publication by Regional office of notification of issuance of waiver in the Federal Register (Appendix 4 contains a draft Federal Register notice).

When notification of the issuance of a waiver is published in the Federal Register, the Regional office should send appropriate information to Headquarters for a link to the Federal Register notice to be posted on EPA’s Recovery.gov website.

Cross-Agency Coordination Working Group

EPA will establish a national coordination working group composed of representatives from our Offices in the two SRF programs, and from the Regions. This group will have two principal functions:

1. To provide oversight of the national waiver process through consultation, quality control, and direction as necessary to clarify and resolve policy issues raised on waiver requests.
2. To identify the potential for appropriate national or (U.S. geographical) regional, categorical waivers to be issued based on similar circumstances identified in the detailed justifications for a waiver or waivers. Such categorical waivers may be based on one or a combination of the grounds for a waiver specified in ARRA section 1605(b), as may be appropriate to the detailed justifications available or developed.

Special Circumstances

Under certain special circumstances, EPA may grant a waiver of the Buy American provisions under the authority to waive such provisions if application of such provisions would be inconsistent with the public interest. A determination to grant a waiver of the Buy American provisions based solely on inconsistency with the public interest (as authorized under ARRA section 1605(b)(1)) must be made with EPA Office of Water consultation due to the possible national implications of such a waiver, except in any particular categories of “public interest” cases for which EPA has defined in national information, policy, or guidance the applicable conditions and the specific elements of the individual justification that must be provided. For the Regional office to consider these types of waiver requests, it must find that the conditions defined in the national information, policy, or guidance, and that the elements, in scope and detail, of the information provided to justify the request, are both present as required. If these are both present, the Regional office can then determine whether the justification offered is sufficient, within the terms set forth in the applicable information, policy, or guidance, to grant the waiver. This application will be sent to the same email address as mentioned above in Chart 1, however the requester should indicate in the subject line that the request is for a public interest waiver.

EPA has issued a national “public interest” waiver, signed by Acting Assistant Administrator Michael Shapiro on April 1, 2009, for eligible projects for which a Clean or Drinking Water State Revolving Fund (SRF) has concluded or will conclude an assistance agreement using ARRA funds to refinance a debt incurred on or after October 1, 2008, and before February 17, 2009. The waiver was based on the SRF appropriations provision in ARRA Title VII authorizing refinancing of such debts: “The imposition of ARRA's Buy American requirements on [such] projects . . . would in all cases entail time-consuming delay and thus displace the "shovel ready" status of these projects[, and] would frustrate Congress' specific and explicit intent to allow for the use of ARRA funds to refinance those projects through the SRFs, as well as for expeditious construction generally.”

National Waivers

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron, steel, or manufactured goods. As stated in the discussion of the “Cross-Agency Coordination Working Group,” above, EPA may develop national or (U.S. geographic) regional categorical waivers through the identification by that Working Group of similar circumstances in the detailed justifications presented to one or more Regions in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public’s interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver. All national waivers will be issued by EPA Headquarters.

Split Funding

Based on their intended use plans many States intend to fund projects with “split” funding, from ARRA and the base SRF program. Based on the ARRA language in section 1605, which requires that American iron, steel, and manufactured goods be used in any project receiving ARRA funding, EPA has concluded that any project that is funded in whole or in part with ARRA funds, must comply with the Buy American provisions. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of ARRA projects into separate and smaller contracts or assistance agreements to avoid Buy American coverage on some portion of a larger project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in segregable phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for ARRA and base funding would carry separate requirements.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact George Ames, Chief, State Revolving Fund Branch, Municipal Support Division, at (202) 564-0661, or Charles Job, Chief, Infrastructure Branch, Drinking Water Protection Division, at (202) 564-3941.

Attachments

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to ensure that all appropriate and necessary information is submitted to EPA. Please review this checklist carefully and provide all required information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p>General</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Description of the foreign and domestic construction materials — Unit of measure — Quantity — Price — Time of delivery or availability — Location of the construction project — Name and address of the proposed supplier — A detailed justification for the use of foreign construction materials • Waiver request was submitted according to the instructions in the memorandum • Assistance recipient made a good faith effort to solicit bids for domestic construction materials/manufactured goods, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor 		
<p>Cost</p> <ul style="list-style-type: none"> • Waiver request includes the following information: <ul style="list-style-type: none"> — Price Comparison Worksheet shown in Table 1 — Relevant excerpts from the bid documents used by the contractors to complete the Price Comparison Worksheet — Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers 		
<p>Availability</p> <ul style="list-style-type: none"> • Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> — Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials — Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Waiver request includes a statement from the prime contractor confirming the non-availability of the domestic construction materials for which the waiver is sought • Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 		

Table 1: Foreign and Domestic Construction Materials Price Comparison Worksheet

Instructions: To be completed by the prime contractor. In column a), enter all iron, steel, and manufactured goods required to build the project as designed. In column b) enter the cost estimate for each component as supplied by domestic sources. In column c) enter the cost estimate for each component for which waivers are requested, as supplied by foreign sources.

(a) Material	Unit of Measure	Quantity	(b) Price – Domestic Material*	(c) Price – Foreign Material*
			(d) Total Domestic Project Cost:	(e) Total Foreign Project Cost:

*Include all delivery costs to the construction site

Appendix 2: Regional Review Checklist for Waiver Request

Instructions: To be completed by the EPA Regional Office. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic construction material for which the waiver is sought:

1. The 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.
2. The inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
Cost				
<ul style="list-style-type: none"> • Does the waiver request include the following information? <ul style="list-style-type: none"> — Price Comparison Worksheet shown in Table 1 — Relevant excerpts from the bid documents from foreign and domestic sources used to complete the Price Comparison Worksheet — A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market • Does the Total Domestic Project Cost indicated in column (d) of the Price Comparison Worksheet exceed the Total Foreign Project Cost indicated in column (e) by more than 25% of the value in column (e)? 				
Availability				
<ul style="list-style-type: none"> • Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron, steel, and manufactured goods for which the waiver is requested? <ul style="list-style-type: none"> — Supplier information or other documentation indicating availability/delivery date for construction materials — Project schedule — Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials • Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers? • Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information) • Is the Region aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include: <ul style="list-style-type: none"> — Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State — Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States — Correspondence with construction trade associations indicating the non-availability of the construction materials • Are the available domestic construction materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits? 				

Table 1: Foreign and Domestic Construction Materials Price Comparison Worksheet

Instructions: To be completed by the prime contractor. In column a), enter all iron, steel, and manufactured goods required to build the project as designed. In column b) enter the cost estimate for each component as supplied by domestic sources. In column c) enter the cost estimate for each construction material/manufactured good for which waivers are requested, as supplied by foreign sources.

(a) Material	Unit of Measure	Quantity	(b) Price – Domestic Material*	(c) Price – Foreign Material*
			(d) Total Domestic Project Cost:	(e) Total Foreign Project Cost:

*Include all delivery costs to the construction site

Appendix 3: Sample Buy American Contract Language

THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS THAT MAY USE ARRA FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW. IT IS IMPERATIVE THAT ANY PARTY INSERTING THIS CLAUSE INTO A CONTRACT VERIFY THAT IT IS LEGAL AND ENFORCEABLE ACCORDING TO STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES:

The Contractor acknowledges to and for the benefit of the City of _____ (“Purchaser”) and the _____ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the federal American Recovery and Reinvestment Act of 2009 (ARRA) (or are being made available for a project being funded with monies made available by the federal ARRA) and such law contains provisions commonly known as “Buy American,” that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States (“Buy American Requirements”) including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Appendix 4: Draft Federal Register Notice

ENVIRONMENTAL PROTECTION AGENCY

Region ____

ACTION: Notice of waiver of Section 1605 (Buy America requirement) of American Recovery and Reinvestment Act of 2009 (ARRA) for _____ under the Section 1605 waiver authority based on the conclusion that [applying these requirements would be inconsistent with the public interest] [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 [inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent] [pick one]

SUMMARY: The EPA is hereby granting a waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section [1605(b)(1) (public interest waiver)] [1605(b)(2) (quantity and quality waiver)] [1605(b)(3) (cost waiver)] [pick one] for _____. This action permits the use of [iron, steel, or manufactured good for which the waiver is provided] in [the project].

EFFECTIVE DATE: _____.

FOR FURTHER INFORMATION CONTACT: _____, Office of _____ (XXX) XXX-XXXX or _____, Office of _____ (XXX) XXX-XXXX, Environmental Protection Agency, [address].

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a waiver of the requirements of section 1605(a) of P.L. 111-5, Buy America requirements, for [project name and description].

The basis for the nationwide waiver is: [describe the basis, analysis undertaken, and a detailed description of the findings the lead to the decision to grant a waiver]

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

Issued on: [date]. _____, Regional Administrator, U.S. Environmental Protection Agency, Region ____ [FR Doc. 09-XXXX Filed 3-2X-09] BILLING CODE XXXX-XX-X.

Appendix 5: Sample Certification

FOLLOWING IS A SAMPLE CERTIFICATION THAT AN ASSISTANCE RECIPIENT MAY REQUIRE FROM A CONTRACTOR OR BIDDER. THIS IS ONLY A SAMPLE AND MAY BE USED AT THE DISCRETION OF THE ASSISTANCE RECIPIENT TO ENSURE COMPLIANCE WITH SECTION 1605 OF THE ARRA:

1. Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the Purchaser's bid solicitation and the provisions of ARRA Section 1605, the Bidder certifies that this bid reflects the Bidder's best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
2. Verification of U.S. Production: The Bidder certifies that all components contained in the bid solicitation that are American-made have been so identified, and if this bid is accepted, the Bidder agrees that it will provide reasonable, sufficient, and timely verification to the Purchaser of the U.S. production of each component so identified.
3. Documentation Regarding Non- American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any component or components that are not American-made and are so identified in this bid, the Bidder has included in or attached to this bid one or both of the following, as applicable:
 - a. Identification of and citation to a categorical waiver published by the U.S. Environmental Protection Agency in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components;
 - b. Verifiable documentation sufficient to the Purchaser, as required in the bid solicitation or otherwise, that the Bidder has sought to secure American-made components but has determined that such components are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation, with assurance adequate for the Bidder under the applicable conditions stated in the bid solicitation or otherwise.
4. Information and Detailed Justification Regarding Non- American-made Iron, Steel, or Manufactured Goods: The Bidder certifies that for any such component or components that are not so available, the Bidder has also provided in or attached to this bid information, including but not limited to the verifiable documentation and a full description of the bidder's efforts to secure any such American-made component or components, that the Bidder believes are sufficient to provide and as far as possible constitute the detailed justification required for a waiver under section 1605 with respect to such component or components. The Bidder further agrees that, if this bid is accepted, it will assist the Purchaser in amending, supplementing, or further supporting such information as required by the Purchaser to

request and, as applicable, implement the terms of a waiver with respect to any such component or components.