560217

UNITE D STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION OFFICE OF ADMIN ISTRATI VE LAW JUDGES

)	PUBLI C
In the Matter of)	
McWANE, INC., a corporation, and)	DOCKET NO. 9351
STAR PIPE PRODUCTS, LTD., a limited partnership.)	_)

COMPLAI NT COUNSEL'S REQUESTS FOR ADMISSIONS TO RESPONDENT MCWANE, INC. (1-50)

Pursuant to the Federal Trade Coission's Rules of Practice, 16 C.F.R. § 3.32, and the Definitions and Instructions set forth belowomplaint Counsel hereby requests that Respondent McWane, Inc. adm uy American requirement.

nvironnental Protection Agency ("EPA") must grant or approve any and all rs to the Buy American requirement of ARRA for any ARRAWaterworks Project.

ondent cannot Identify assile of Imported Relevant Product for use in an ARRA works Projects pursuantate Public Inteest Waiverother than the three Public St Waivers seforth in Exhibit A.

ondent is unaware of any statentroropinion by the EPA that Inforted Relevant ct is an "incidental commonent," as described in 74 Federal Register No. 152 day, August 10, 2009) 39959-60.

ondent cannot Identify assile of anythorted Releant Product for use in any waterworks Projects pushent to the waiver for de minimusincidental onents as described in 74 Fedderagister No. 152 (Monday, August 10, 2009) 1-60.

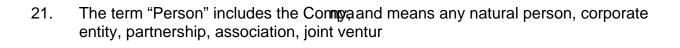
ondent cannot Identifynyasale of anyrhportedRelevant Product that was factured in Mexico or Canada force in any ARRA Waerworks Project.

RRA increased thenumber of Waterworks Projects being built, repired or vise commissioned the United States.

- 8. Respondent competed for sales of Doting Relevant Product for use in ARRA Waterworks Projectafter February 2010.
- 9. Respondent continues to compete for safesomestic Relevant Product for use in ARRA Waterworks Projects today.
- 10. The only Persons that currently Manufactureull-Line of Domestic Relevant Product that is 24" in diameter ormaller are Respondent and Star.
- 11. Respondent is unaware of any Personhthast Plans to begin Manufacturing Domestic Relevant Product that is 24" in diametersmaller within the next two years.
- 12. Prior to Star's entry in 2009 when it begleanufacturing Domestic Relevant Product, Respondent was the only Manufacturer of a Eurle of Domestic Relevant Product that was 24" in diameter or smaller since at least 2007.
- 13. At least 90% of all RelevaProducts sold in the United States, as measured by revenue, are 24" in diameter or smaller.
- 14. Any Relevant Product that meets AWWAnstards and a particular specification is functionally interchangeable with any other Relevant Pros2generationa.8n9p22beaects

- Respondent does not consider the price of arrey to present of the Relevant Product.
- 24. No other product constrains threece of the Relevant Product.
- 25. Respondent sells all, or nearly all itofRelevant Producto distributors.
- 26. Distributors are critical tune success of Respondent.
- 27. Distributors sell Relevant Products in local geographic markets.
- 28. Distributors typically setto end users all of the produceded for a specific Waterworks Projecte(g, pipe, hydrants, valves, fittingstc).
- 29. To begin selling Relevant Product in the United States, a new entrant must secure Manufacturing through one or more foundries.
- 30. To begin selling Relevant Product in the United States, a new entrant must develop, purchase or otherwise obtain forms for castingnerous fittings in different shapes and sizes.
- 31. To sell Relevant Product Successfully in the distribution network with a suffi

- 4. "Buy American requirement" means any presiron in a specification, contract, code, regulation, or statute that request that the Relevant Produceds a waterworks project be Manufactured in the United States.
- 5. The term "Communication" means any traintsan, exchange, transfer, or dissemination of information, regardless of the meanyswhich it is accomplised, and includes all communications, whether written or orannot all discussions, meetings, telephone communications, or email contacts.
- 6. The term "Competitor" means each and every Person actually or potentially engaged in the Manufacture or importation of any Relevant Product feale or resale within the United States, including ithout limitation, McWane, Star, Sigma, and Serampore Industries Private, Ltd.
- 7. The term "Containing" means containing, desirring, or interpreting inwhole or in part.
- 8. The term "DIFRA" means the Ductile Iron Fittings Reseaks sociation, its directors, officers, trustees, employees, attorneagents, accountants, consultants, and representatives.
- 9. TeldentsæffT"DIFRATINfðTinnatikka Elxichainthe"<an@alocsDife>>xBbdCl57T.BC)DOITTIO an \$film<an@alocsDife etclu of



INSTRUCTIONS

- 1. Provide separate and complete sworn writesponses for each Request for Admission ("Request").
- 2. Your answers to any Request must under all information within your possession, custody, or control, including information assonably available to you and your agents, attorneys, or represtantives. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and that the information known meradily obtainable by you is insufficient to enable you to admit or deny the matter.
- 3. A Request will be deemed admitted unless, **iwith** days of service of this request, you serve a sworn written answer to the Request.
- 4. Your answer should specifically admit downy the Request or set forth in detail the reasons why you cannot truthfully admit or deny it after exercising due diligence to secure the information necessary to makell and complete answer, including a description of all efforts you made to obstaine information necessary to answer the Request fully.
- 5. If you object to a portion on aspect of any Requestate the grounds for your objection with specificity and respond to the remainder of the Request.
- 6. When good faith requires that you qualify younswer or deny only a part of the matter of which an admission is requested, specify so much of it as is true and qualify or deny the remainder.
- 7. If you consider that a matter of which **ad**mission has been requested presents a genuine issue for trial, you may not, on the trial alone, object the request; instead, you must deny the matter or set for the trial alone, object the request; instead, you must deny the matter or set for the trial alone.
- 8. Answer each Request fully and completelyrepg1uest. a Tdd [(t22I_Label <</MCID 16 27.4C 0

- attorney work product doctrinetate the nature of privilege or doctrine you claim and provide all other information arequired by 16 C.F.R. § 3.38A.
- 12. Whenever a Request is statedhie conjunctive, it shall also taken in the disjunctive, and vice versa.
- 13. Whenever a Request is statedhie singular, it shall also beken in the plural, and vice versa.
- 14. Estimated dates should be given when, doubt when, exact dates annot be supplied. Any estimates should be identified as such.

May 22, 2012	Bv·	s/ Linda Holleran
May 22, 2012		3/ Linda Honoran

CERTIFICATE OF SERVICE

I hereby certify that on May 22012, I filed the foregoing document	
electronically using the FTC's E-Filing Syst, which will send notification of suc	ch

	_
	-

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic popsent to the Secretary to the Commission is a true and correct copy of the paper original and that I posspaper original of the signed document that is available for review the parties and the adjudicator.

May 22, 2012 By: s/ Linda Holleran

Attorney

commercial and industrial (ICI) boilers, vapor recovery at gas stations, large above ground storage tanks, seaports, aftermarket catalysts, lightering, and non-road idling.

DATES: The meeting will be held on November 10, 2010 starting at 9 a.m. and ending at 4 p.m.

Location: Sheraton Boston, 39 Dalton Street, Boston, Massachusetts 02199; (617) 236–2000 or (888) 627–7054. FOR FURTHER INFORMATION CONTACT: For documents and press inquiries contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: ozone@otcair.org; Web site: http://www.otcair.org.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the Control of Interstate Ozone Air Pollution. Section 184(a) establishes an Ozone Transport Region (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the OTC is to deal with ground-level ozone formation, transport, and control within the OTR.

Type of meeting: Open.
Agenda: Copies of the final agenda
will be available from the OTC office
(202) 508–3840; by e-mail:
ozone@otcair.org or via the OTC Web
site at http://www.otcair.org.

Dated: September 7, 2010.

W.C.

Agenda53 3570 135.3EMC /Sp2 1 c

According to Auburn-Lewiston, the subcontract to furnish and install the ductile iron pipe and pipe fittings was awarded on March 11, 2010 and none of the subcontractors raised any concerns about getting the pipe fittings delivered on time. A purchase order for the ductile iron piping and fittings was placed on April 29, 2010 with an agreed upon shipping date of July 19, 2010 to meet the project schedule.

On July 19, 2010, the supplier received notification from the domestic foundries manufacturing the subject fittings that due to production order backlog, delivery of standard fittings would be delayed at least 4 weeks and delivery of the special, non-standard fittings (long radius bends and large diameter tees) could be delayed at least 8 weeks. The project procurement manager reported that the estimated 4 and 8 week delays were not guaranteed and that the delays could be longer. The possibility of delays was confirmed by EPA's national contractor in conversation with the manufacturer.

The project schedule called for delivery and installation of the ductile iron pipe fittings between July 16, 2010 and August 12, 2010, so the testing of the lines could be initiated prior to September 1, 2010. In addition, the ultraviolet disinfection treatment system testing completion and operator training milestone date is December 8, 2010, with an overall project completion and transfer of facility to the owner date of January 5, 2011. If the delivery of the pipe fittings is delayed until mid-September of 2010, it is estimated that final completion date will be pushed back to at least several weeks. There also has been no guarantee given by the manufacturer that the fittings will be delivered by mid-September, the revised delivery date. According to Auburn-Lewiston, delivery times for certain items are being quoted as long as six months for existing orders.

The project procurement manager solicited quotations and committed delivery times for non-domestic manufactured ductile iron fittings from two local suppliers. Based on the information that was obtained, the nondomestic manufactured ductile iron pipe fittings necessary for the project, with the exception of one 24 x 4 tee. could be delivered within a time frame to meet the project schedule. The work could be coordinated to accommodate the later delivery of the 24 x 4 tee and preserve the December 8, 2010 overall system testing and operator training milestone date, as well as the January 5, 2011 overall project completion date.

Based on the review conducted by EPA's national contractor, Auburn-

Lewiston's claim that the specific ductile iron fittings are not available from a domestic manufacturer to meet project schedule milestones is supported by the available evidence. At least eight additional potential domestic manufacturers of ductile iron pipe fittings were contacted and it was determined that none would be able to meet the required project delivery schedule.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are "shovel ready" by requiring potential SRF eligible recipients, such as the Auburn-Lewiston to either revise their design standards and specifications, or in this situation significantly alter its construction schedule. The imposition of ARRA Buy American requirements in this case would result in an unreasonable delay for this project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain iobs.

The April 28, 2009 EPA HQ
Memorandum, "Implementation of Buy
American provisions of Pub. L. 111–5,
the 'American Recovery and
Reinvestment Act of 2009' "
("Memorandum"), defines reasonably
available qu(thees) the spenlestoa -01_4dome6 /T1_4 1 Tf 7.051 0 Td (")Tj /T1_2 11 Tw T* (avRe

avReie of ARRA Buy AmeriReiSeelay tment suc1605(a)horean ctl Lawisions oftrucedule mileswau

manufacturer is aware of the scheduling implications and has offered to provide the sluice gates at no cost, other than for freight and field service charges. The Town, which could not reasonably foresee the need for a waiver to the Buy American provision of the ARRA, submitted a waiver request immediately (July 9th, 2010) after they were informed by the manufacturer of the delivery oversight.

Re-ordering the gates and having them manufactured in the Massachusetts facility would delay the upgrade work to the final clarifiers by at least three months. Unfortunately, the existing final clarifier equipment has already failed, and since existing wastewater flows at the wastewater treatment plant are currently at seasonal lows, the most opportune time to install the new sluice gates would be during the July and August time frame.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or require the substantial redesign of projects that are "shovel ready," such as this project at the Bristol, Rhode Island Wastewater Treatment Plant. The implementation of the ARRA Buy American requirements in this case would result in additional cost for this project and unreasonable delay in its completion. Such delay would also directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs. More importantly, the imposition of the Buy American requirement would result in additional risk to water quality protection.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the Town's design engineer established a proper basis to specify that using the domestic manufactured good would be inconsistent with the public interest of the Town of Bristol, Rhode Island. The information provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA and in the April 28, 2009 Memorandum: Applying these requirements would be inconsistent with the public interest.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary 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 using a domestically available alternative

manufactured good would be inconsistent with the public interest, the Town of Bristol, Rhode Island is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5. This waiver permits use of ARRA funds for the installation and utilization of foreign manufactured influent and effluent sluice gates as documented in the Town's waiver request submittal dated July 9, 2010. 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: September 15, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. 2010–23968 Filed 9–23–10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9206-3]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Lowell, MA

AGENCY: Environmental Protection

Agency (EPA). ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(1) [inconsistent with the public interest] to the City of Lowell, Massachusetts (City) for the purchase of a foreign manufactured 30-inch diameter pipe tee fitting for a finished water pipe at the Lowell Water Treatment Facility. 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

ARRA project n.ailMENT2us2010.

Town oh cy of line eied BDC (Ell Water T* (influen* (Treatmeity. Tlineed July ject-)T (influej T* (v

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.

When a recipient or sub-recipient has used foreign iron, steel, and/or manufactured goods for an ARRA project without authorization, as is the case here, OMB's regulation at 2 CFR 176.130 directs EPA to take appropriate action, which may include processing a determination concerning the inapplicability of Section 1605 of ARRA in accordance with 2 CFR 176.120. Consistent with the direction of 2 CFR 176.120, EPA will generally consider a waiver request made after obligating ARRA funds for a project to be a "late" request. However, in this case EPA has determined that the City's request, though made after the date the contract was signed and after use of the foreign pipe fitting, can be evaluated as timely because the City could not reasonably have foreseen the need for such a determination until after initiating the work. Accordingly, EPA will evaluate the request as if it were timely.

The City is requesting a waiver of the Buy American provision for a 30-inch diameter pipe fitting that was manufactured in China which replaced an existing 30-inch diameter cement lined ductile iron fitting on a finished water line at the Lowell Water Treatment facility. According to the City's design engineer, the existing 30inch diameter pipe fitting had been leaking for some time at the threaded connection with a 2-inch air release valve. The original intent of the City was to remove the air release valve, clean the threads, perform the necessary repairs, and re-install the existing 30inch fitting. However, in the event of a possible break in the pipe delivery system or if the existing fitting failed during the repair work, a new 30-inch diameter pipe fitting had to be on-site on an emergency standby basis. As a result, the City explored having a 30inch diameter pipe fitting on-site before they could start any additional repair

During the week of May 3rd, 2010, the City was informed by three suppliers/ vendors that a 30-inch diameter domestic pipe fitting would not be available on an emergency standby basis unless the City purchased it outright. Based on information provided by the City's consulting engineer, due to the large size of the fitting, vendors would only make their imported 30-inch tee pipe fittings available on standby status, but not their domestic pipe fittings. As a result, no domestic-made fittings of

that size were available for stand-by in an emergency situation that would meet technical specifications. The City could not find a supplier/vendor that would promise right of first refusal on a domestic manufactured pipe fitting without purchasing it in full. None of the available vendors would allow the City the opportunity to return a 30-inch diameter domestic pipe fitting, if the City had decided on not installing it.

The City decided to order a 30-inch diameter foreign manufactured pipe fitting (made in China at a cost to the City of Lowell of \$4,000) to have it available on an emergency standby basis to minimize plant shutdown and any disruption of water service delivery, in the event total replacement became necessary or if the pipe delivery system failed. The City had planned to repair and re-install the existing pipe fitting, but once the repair work had begun, it was determined that complete replacement was the proper approach to take. During the week of June 14th, the new foreign manufactured 30-inch diameter pipe fitting was installed. Fortunately, and more importantly, no disruption of water transmission service took place due to proper planning. The City then made the request to the EPA for a waiver on June 18, 2010, immediately after the emergency replacement work took place and it could not reasonably foresee the need for such a determination until after initiating the repair work and determining that a complete replacement of the pipe fitting was the proper course of action.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or require the substantial redesign of projects that are "shovel ready," such as this project at the Lowell Water Treatment Plant. The imposition of ARRA Buy American requirements in this case would have likely resulted in unreasonable additional cost for this project and delay in its completion. Such delay would also directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs. More importantly, the imposition could have resulted in a risk to public health had water service been interrupted for any extended period of time.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the City's design engineer established a proper basis to specify that using the domestic manufactured good would be inconsistent with the public interest of the City of Lowell. The information

provided is sufficient to meet the following criteria listed under Section 1605(b)(1) of the ARRA and in the April 28, 2009 Memorandum: Applying these requirements would be inconsistent with the public interest.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary 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 using a domestically available alternative manufactured good would be inconsistent with the public interest, the City of Lowell, Massachusetts is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5. This waiver permits use of ARRA funds for the purchase of a foreign manufactured 30-inch diameter pipe fitting documented in the City's waiver request submittal dated June 18, 2010. 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 15, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1-New England.

[FR Doc. 2010-23988 Filed 9-23-10; 8:45 am] BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION **AGENCY**

[FRL-9205-5]

Science Advisory Board Staff Office Request for Nominations of Experts for the Review of Great Lakes Restoration Initiative Action Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations for technical experts to form an SAB panel to review the interagency Great Lakes Restoration Initiative (GLRI) Action Plan which describes restoration priorities, goals, objectives, measurable ecological targets, and specific actions. DATES: Nominations should be submitted by October 15, 2010 per

instructions below.