

Middle School Mercury Spill Site by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- <http://www.epa.gov/region4/waste/sf/enforce.htm>.
- E-mail. [Painter.Paula@epa.gov](mailto:Painter.Paula@epa.gov).

**FOR FURTHER INFORMATION CONTACT:**

Paula V. Painter at 404/562-8887.

Dated: April 29, 2011.

**Anita L. Davis,**

*Chief, Superfund Enforcement & Information Management Branch, Superfund Division.*

[FR Doc. 2011-12770 Filed 5-23-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-9310-3]**

**Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Smyrna, DE**

**SUMMARY:** The EPA is hereby granting a 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 Town of Smyrna, DE ("Town"), for the purchase of two inverter-driven ductless split HVAC systems: one air conditioning system and one combined heating/air conditioning system (HVAC), manufactured in Japan and Thailand by Mitsubishi Electronics American, Inc.—HVAC Division. 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 ARRA funded project is for upgrading two well houses (Well House No. 1 and Well House No. 2) with ductless split HVAC systems. The Well House No. 1 upgrade includes an air conditioning system for the well room and for Well House No. 2 the upgrade includes a heat pump system for the electrical room. The Town evaluated four different manufacturers of the specified ductless split air conditioning and heat pump systems. Based upon information submitted by the Town and its consulting engineer, EPA has concluded that there are no HVAC systems manufactured in the United States in sufficient and reasonable

quantity and of a satisfactory quality to meet the technical specifications and that a waiver of the Buy American provisions is justified. The Regional Administrator is making this determination based on the review and recommendations of the EPA Region III, Water Protection Division, Office of Infrastructure and Assistance.

The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to the requirements of Section 1605(a) of ARRA. This action permits the purchase of two inverter-driven ductless split HVAC systems for the proposed project being implemented by the Town of Smyrna.

**DATES:** May 24, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Robert Chominski, Deputy Associate Director, (215) 814-2162, or David McAdams, Environmental Engineer, (215) 814-5764, Office of Infrastructure & Assistance (OIA), Water Protection Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

**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 Town of Smyrna, Delaware for the purchase of two inverter-driven ductless split HVAC systems (HVAC) for Well Houses 1 and 2. EPA has evaluated the Town's basis for procuring the two HVAC systems for these well houses. The ARRA funded project is for upgrading two well houses (Well House No. 1 and Well House No. 2) with HVAC systems. The Well House No. 1 upgrade includes an air conditioning system for the well room and for Well House No. 2 the upgrade includes a heat pump system for the electrical room. Each system includes an indoor wall mounted evaporator-fan unit and an outdoor airtight cooled compressor-condenser. The new HVAC split systems will provide benefits to the Town due to the product's reliability with the electronics controlling critical infrastructure, cost effectiveness, energy efficiency, and ease of maintenance. The project specifications require a scroll inverter type compressor with multi-speed motor and copper refrigerant tubes having mechanically bonded aluminum fins complying with ARI 210/240, and with liquid sub-cooler; wall mounted evaporator fan unit with direct drive centrifugal fan and copper refrigerant tubes with mechanically bonded aluminum fins complying with

ARI 210/240; use of R-410A refrigerant; and a low ambient kit permitting operation down to 0°F [applicable to the heat pump only]. The HVAC systems are specifically designed for this project to support new Motor Control Centers in the well houses. Currently, there are no HVAC systems in the two well houses. Based upon information submitted by the Town and its consulting engineer, EPA has concluded that there are no ductless split HVAC systems manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the technical specifications for the Town to pursue the purchase of domestically manufactured HVAC systems.

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 a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided under Section 1605(b) 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.

EPA has also evaluated the Town's request to determine if its submission is considered late or if it could be considered as if it was timely filed, as per the OMB Guidance 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 guidance, 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 Town's project specifications for the HVAC systems. The waiver request was submitted after the contract date due to the Town's contractor not notifying them until February 24, 2011 that a Buy American waiver was needed since they could not find an American manufacturer of the HVAC system to meet the project specifications. Therefore, the Town did not submit a waiver request until March 3, 2011. There is no indication that the Town failed to request a waiver to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products that meet the project specifications. EPA will consider the Town's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by the Town and no loss by the government due to the late request.

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." The Town has provided information to the EPA representing that there are currently no domestic manufacturers of the HVAC systems that meet the project specification requirements. Based on additional research by EPA's consulting contractor and to the best of the Region's knowledge at this time, there does not appear to be any other manufacturer capable of meeting the Town's 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 Town, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. 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 OIA has reviewed this waiver request and, to the

best of our knowledge at the time of review, has determined that the supporting documentation provided by the Town is sufficient to meet the criteria listed under Section 1605(b) 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). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality to meet the Town's technical specifications, 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 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 Town of Smyrna is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111-5 for the purchase of two inverter-driven ductless split HVAC systems using ARRA funds as specified in the Town of Smyrna's request of March 3, 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.

Issued on: Dated: April 27, 2011.

**W.C. Early,**

*Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.*

[FR Doc. 2011-12772 Filed 5-23-11; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 11-71; FCC 11-64]

### Maritime Communications/Land Mobile, LLC, Licensee of Various Authorizations in the Wireless Radio Services, Applicant for Modification of Various Authorizations in the Wireless Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document commences a hearing proceeding to determine ultimately whether Maritime Communications/Land Mobile, LLC (Maritime) is qualified to be and to remain a Commission licensee, and as a consequence whether any or all of its licenses should be revoked, and whether any or all of the applications to which Maritime is a party should be denied. The issues designated for hearing also include whether Maritime should be ordered to repay to the U.S. Treasury the full amount of the bidding credit, plus interest, that it received as a result of claiming designated entity status; whether a forfeiture not to exceed the statutory maximum should be issued against Maritime for apparent violations of the Commission's rules; whether Maritime and its principals should henceforth be prohibited from participating in FCC auctions; and whether Maritime's licenses for its site-based AMTS stations cancelled automatically for lack of construction or permanent discontinuance of operation in violation of sections of the Commission's rules.

**DATES:** Petitions to intervene by parties desiring to participate as a party in the hearing, pursuant to 47 CFR 1.223, may be filed on or before June 23, 2011.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Gary Schonman, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission at (202) 418-1795.

**SUPPLEMENTARY INFORMATION:** Each document that is filed in this proceeding must display the docket number of this hearing, EB Docket No. 11-71, on the front page. This is a Public Version of the text of the Order to Show Cause and Notice of Opportunity for Hearing (Order to Show Cause), FCC 11-64, released April 19, 2011, which is also available for inspection and copying from 8 a.m.