

Association of State Drinking Water Administrators

Brief Summary of EPA's Draft Buy-American Guidance

April 15, 2009

- **Definitions:** Definitions of key terms are provided in the guidance, including "manufactured good." (Per OMB's April 3rd guidance, the Buy-American provisions don't apply to the component parts of a manufactured item as long as the manufacture of the goods occurs in the U.S.)
- **Possible Conditions for Waiver from Buy American Provisions:** Same as those delineated in the ARRA: 1) insufficient quantities of iron, steel, & manufactured goods; 2) the cost of those American-made goods would increase the project cost by 25%; or 3) applying buy-American provisions is inconsistent with the public interest.
- **Roles & Responsibilities Overview:** EPA has the responsibility to make findings and determinations about waivers; however, the process respects the traditional role of state programs in working with assistance recipients.
- **International Agreements:** That waiver provision under the ARRA only applies to direct procurement by certain state agencies or the Federal government; not to SRF assistance recipients.
- **Principal Obligation for Initiating Waiver Process:** Rests with the SRF assistance recipient; they're responsible for compiling the necessary information and should include ARRA Buy American terms in any RFPs or solicitations for bids.
- **Items Needed for Waiver Applications:** EPA has provided checklists as Appendices 1 & 2; assistance recipients should generate appropriation information to support waiver applications in their bid solicitations. Assistance recipients are encouraged to hold pre-bid conferences with potential bidders to help clarify these issues. (*Note: EPA may combine these two checklists into one for the final guidance.*)
- **Where to Apply for Waiver:** To the EPA Regional office, using special e-mail addresses included in guidance.
- **Role of States:** States have no formal role in the waiver process; however, states may elect to conduct an initial screen of waiver requests to assess the sufficiency of the information. States may also wish to work directly with assistance recipients to help them prepare waiver request. States should work with their Regions to determine what role they wish to have.
- **National Contractor:** An EPA-funded national contractor will provide technical assistance in assessing waiver requests and advising the EPA Regions.
- **Timeline and Steps for Regional Reviews of Waiver Requests:** The Region must notify the assistance recipient of approval or denial of their waiver request within 2 weeks of its receipt by the Region.

- **EPA's Internal Process for Review and Approval of a Waiver:**
 - After deciding to grant a waiver, the Region must obtain the approval of EPA's Office of Administration and Resource Management (OARM).
 - *3 days prior to the OARM submittal, the Region must notify a Cross-Agency Coordination Working Group of its intent to grant a waiver and seek that group's concurrence.*
 - After receiving OARM's approval, the Region may notify the state and the assistance recipient of the Agency's decision.
 - The Regional office will publish notification of waivers in the Federal Register. That information will be linked to EPA's recovery.gov website as a means to provide guidance to those who may have similar circumstances and conditions.

- **Exception to Above Process -- Public Interest Waiver:** Only EPA-HQ can issue these waivers. One such waiver has already been issued for ARRA funds used to refinance debt incurred between 10/1/08 and 2/17/09.

- **National Waivers:** EPA may, if warranted, issues national waivers for certain categories of iron, steel, or manufactured goods.

- **Applicability of Buy-American Provisions to Split-Funded Projects:** States may elect to fund a portion of a project with ARRA funds (in which case, all ARRA requirements apply, including the Buy-American provisions) and another, separate portion with non-ARRA funds. EPA defines its interpretation of independent "projects" in the guidance to mean projects whose functionality does not depend on completion of another project.