

March 25, 2009

Paul LaVigne
Water Pollution Control Revolving Fund
Montana Department of Environmental Quality
1520 E. Sixth Avenue
P.O. Box 200901
Helena, MT 59620-0901

RE: Conrad WWTP Upgrade Project – Waiver Request

Dear Paul:

This letter is to request clarification regarding the waiver process associated with the Buy American Requirement in the American Recovery and Reinvestment Act of 2009 (Recovery Act), as follows:

“(b) Buy American Requirement. None of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“Recovery Act”) may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless—

- (1) The public building or public work is located in the United States; and
- (2) All of the iron, steel, and other manufactured goods used as material in the project are produced or manufactured in the United States. Production of the iron or steel in the United States requires melting in the United States.”

Also:

“(c) Exceptions to Buy American Requirement. A recipient may request a waiver from the Buy American Requirement when it believes one of the following exceptions applies in a particular case:

- (1) applying the Buy America Requirement 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.”

The City of Conrad's Wastewater Treatment Plant Upgrade project bid on March 12, 2009 with a low bid of \$3,989,000. This project is shovel-ready and we are ready to make a recommendation for award to the low bidder, Dick Anderson Construction. During the bidding process, we learned that this project was ranked No. 1 on MDEQ's priority list for stimulus funding, primarily because it is ready for construction right away. As suggested by your

department and in anticipation of some of the known requirements that would be in the stimulus package, we scrambled to add the Buy American requirements and the Davis Bacon requirements into the bid documents by addendum. We also increased the award period to 90 days (from 60 days) to allow time to work out any items that might arise after the bid. We decided not to postpone the bid at that time because we were unaware until after the bid opening that the ARRA requirements would be so difficult to meet for some of the equipment manufacturers that were bidding on the project.

In their bids, the contractors that submitted on the project made every effort to meet the Buy American requirements. For example, they made sure that all of the rebar for the concrete and all of the piping that was quoted would meet this stipulation. However, when it came to the specialized treatment equipment required, the contractors were unable to find suppliers or manufacturers that could certify that all of their iron, steel, and other manufactured goods are produced or manufactured in the United States. Instead of not turning in a bid, the contractors chose to submit their bids using the equipment quotes they received.

The feedback we have received from the manufacturers that bid on this project is that in order for them to remain competitive in today's global economy and stay in business, they must manufacture their products using parts and materials that make the most economic sense. In most cases, nearly all of the parts and materials used to build these specialized machines do in fact come from the United States and in almost all cases the machines themselves are assembled in the United States. However, everyone we have talked to so far has stated that their equipment contains at least a few parts that were made somewhere else, primarily because those parts are not available from a U.S. source in the quantities required or the quality required. Please note that the use of the word "all" in the ARRA requirements makes it extremely difficult for any manufacturer of complex specialized equipment to meet this stipulation.

Just as an example, this project includes Ultraviolet Light (UV) equipment to disinfect the treated wastewater prior to discharge. Unfortunately, there are no UV equipment manufacturers that we are aware of that can supply this required equipment with products that are made entirely from U.S. parts and materials. The manufacturers that bid on the project include Trojan Technologies, Infilco Degremont, Wedeco, and Severn Trent. While at least one of these companies (Infilco Degremont) has their headquarters in the United States, that doesn't seem to factor in to the determination of whether or not their equipment meets the ARRA provisions. The low bidder for this equipment was Trojan Technologies, a Canadian company.

Below is a preliminary list of equipment that we believe may require a waiver. I've included the low bidder as well as some of the other bidders for your information.

- 1) Influent Lift Station
 - a. Low Bidder – WEMCO
 - b. Other Bidder – Gorman Rupp

- 2) Grit Pump
 - a. Low Bidder – Gorman Rupp
 - b. Other Bidder – WEMCO

- 3) Positive Displacement Rotary Lobe Pump
 - a. Low Bidder – Vogelsang
 - b. Other Bidder – Boerger

- 4) Secondary Scum Pump
 - a. Low Bidder – Gorman Rupp

- 5) Digested Sludge Pump
 - a. Low Bidder – Gorman Rupp

- 6) Non-Potable Water Pumping System
 - a. Low Bidder – National Pump
 - b. Other Bidder – Flowtronix

- 7) Grit Removal System
 - a. Low Bidder – John Meunier
 - b. Other Bidder – Smith and Loveless
 - c. Other Bidder – Lakeside Equipment

- 8) Grit Cyclone and Classifier
 - a. Low Bidder – John Meunier
 - b. Other Bidder – WEMCO
 - c. Other Bidder – Envirodyne Systems
 - d. Other Bidder – Lakeside Equipment

- 9) Fine Screen
 - a. Low Bidder – John Meunier
 - b. Other Bidder – Lakeside Equipment

- 10) Secondary Clarifier
 - a. Low Bidder – Envirodyne Systems
 - b. Other Bidder – Walker Process
 - c. Other Bidder – Siemens WesTech

- 11) Rotary Lobe Positive Displacement Blowers
 - a. Low Bidder – United Blower
 - b. Other Bidder – Aerzen
 - c. Other Bidder – Dresser Roots
 - d. Other Bidder – Kaeser

- 12) Self Aspirating Floating Surface Aerators
 - a. Low Bidder – Aeromix
 - b. Other Bidder – Aeration Industries

- 13) UV Disinfection Equipment
 - a. Low Bidder – Trojan Technologies
 - b. Other Bidder – Infilco Degremont
 - c. Other Bidder – Severn Trent

14) Polymer Blending System

- a. Low Bidder – Fluid Dynamics
- b. Other Bidder – Velodyne
- c. Other Bidder – Siemens Stranco

Paul, as you can imagine, confusion reigns at this point and none of these manufacturer's can tell me one way or the other if they meet the ARRA requirements or not. Many of them are confusing the Buy American Act (which some of them qualify for) with these requirements and sending out notices that they don't need a waiver because they meet the Buy American Act. None of them want to lose any business over this and are very reluctant to take any position on it. The fact is that when it comes to equipment that literally has hundreds of parts, including metal, plastic, specialty valves, programmable logic controllers, inverter duty motors, explosion proof electronics, specialized instrumentation, electronic switches and circuit boards, etc., I just don't see how anyone could certify that each and every one of those parts was mined, melted, manufactured, cast, and assembled in the United States.

However, as you have explained to me, it's not the equipment manufacturers that will have to pay if they don't meet the requirements, it will be the City of Conrad. The City of Conrad has absolutely no way of verifying whether a bolt or a washer or a transistor or a manufactured piece of plastic on a large machine with hundreds of parts attached to it came from the United States or not. They will be asking their engineer, Morrison Maierle, to provide that verification, which we absolutely have no way of doing. So we will be asking the contractor to have the manufacturer's sign a piece of paper that certifies that it meets the ARRA requirements. If anything arrives on site and it can be determined that it does not meet the ARRA requirements and doesn't have a waiver, the contractor will be asked to send it back and ask for an American replacement. Hopefully, that will be satisfactory.

One additional concern that we would like to get clarification on is the electrical and instrumentation subcontract. Buried within this contract are literally hundreds of small items that will be difficult at this point to determine for each one whether or not it meets the requirements. Could you provide guidance on how to handle that situation? For example, if a small magnetic flow meter and indicator has one part on it that was made outside the United States, do we need to ask for a waiver? There are some larger items such as the computer, the main PLC, and the backup generator that are associated with the Electrical and SCADA system that we may need to request waivers for. I guess I could call Dell, Hewlett Packard, Allen Bradley, Cummins, and Caterpillar to find out if they meet the ARRA requirements, but I'm assuming they will be just as confused as all of the other manufacturer's I've talked to.

As far as the waiver request itself goes, can you provide some guidance on how much detail I need to provide? For example, on the grit pumps, do I need to track down every possible source of grit pumps to see if there is one out there somewhere that can meet the ARRA requirement? I've been in this business for 16 years and have a good idea what equipment works and those are the manufacturers that we list in our specifications. I have a responsibility to my client to make sure they get equipment that I believe will last for 20 years. The equipment that we named in our specifications is the only equipment items that we are comfortable recommending to the City of Conrad for a 20-year life span treatment plant. We are not aware of any other equipment that we would recommend.

Finally, can you give me an idea on the timeline to expect a determination? Our award deadline is June 10th, after which the City will need to re-bid the project. We believe that if the City re-bids the project, the low bid will increase by at least \$150,000 to \$200,000, based on conversations with some of the contractors. Also, Dick Anderson Construction (the low bidder) has stated that they will need to lay off up to 10 workers if this project does not get awarded in the next month. It would be great if we could keep those workers employed in the true spirit of the Recovery Act.

If it looks like a determination can't be made prior to early June (in time to switch funding and award the project), we would appreciate that feedback to save the City the cost associated with preparing the full waiver request. Also, this would help the City to make the decision to stick with their current funding package and get this project going to take full advantage of the upcoming construction season. Unfortunately, this would also result in a net sewer rate increase of approximately \$5 - \$7 per month for each and every rate payer in the City of Conrad. Again, in the true spirit of the Recovery Act, this money would be better spent at local restaurants and retailers to keep them in business and boost the economy. Just this morning, I listened to a segment on National Public Radio stating that this type of stimulus (small amounts of money every month) is much more likely to succeed than other options like one-time tax rebates.

Thanks Paul for all of your help throughout this process and we look forward to hearing from you regarding the waiver process for this project.

Please feel free to contact me with any questions you may have.

Sincerely,

Morrison-Maierle, Inc.



Travis Meyer, P.E.
Project Manager