



June 22, 2009

Ms. Marguerite Pridgen
Office of Federal Financial Management
Office of Management and Budget
Room 6025
New Executive Office Building
Washington, DC 20503

RE: Recovery Act Guidance: Interim Final Guidance – Section 1605
Comments Buy American Requirements Under Section 1605, ARRA

Dear Ms. Pridgen:

On behalf of the American Council of Engineering Companies (ACEC), we would like to express our comments on the Interim Final Guidance document published in the April 23, 2009 *Federal Register* pertaining specifically to Subpart B – Buy American Requirement Under Section 1605 of the American Recovery and Reinvestment Act of 2009.

ACEC is the business association of America's engineering industry, representing 5,500 independent engineering companies throughout the United States. ACEC members are directly engaged in the development of America's infrastructure, and play a particularly critical role in the effort to improve the nation's water and wastewater infrastructure. Our member firms represent the broad spectrum of the industry, from very large firms to small, family-owned businesses. Municipalities and other local governments are often clients of our member firms and we are closely involved in working with ARRA assistance recipients as they develop their water infrastructure projects.

We support the goals of ARRA to move projects forward in a timely and cost-effective manner to help the nation's economic recovery. However, we are very concerned that the Buy American provision as currently interpreted will inadvertently have the effect of slowing down water projects, increasing costs, reducing quality and discouraging local governments from seeking ARRA funding for critically needed environmental improvements.

We are learning from our members that there is a great deal of confusion among local governments regarding the Buy American requirements, and in particular the guidance documents provided by OMB and the Environmental Protection Agency. As you know, most municipalities are not subject to, and are therefore not familiar with, federal procurement requirements or restrictions. They are understandably wary of running afoul of the numerous conditions and exceptions that the guidance outlines.

Engineering firms are unable to write general specifications for manufactured goods that can meet the Buy American requirements to be used in municipal water projects. Instead of providing easy access to suppliers that have been relied upon for years by municipalities, new sources of manufactured goods must be found, increasing costs to local governments, raising questions of reliability and experience of new suppliers, and potentially requiring local governments to purchase incompatible equipment. Particularly for “shovel-ready” ARRA-funded water treatment plant upgrades, requiring a municipality to obtain equipment that is incompatible with that used in the current facility, will require extensive new training for employees, the purchase of new spare parts, and new tools to service the equipment. In our view, this is wasteful of public funds and will jeopardize the time expenditure of ARRA funds.

For the reasons stated, we recommend the following proposals for your consideration:

Section 1605 should NOT apply to local procurement. Applying Section 1605 to state and local procurements is incompatible with the intent of the ARRA, violates the principles of federalism and local government authority over management of municipal facilities and is inconsistent with the nation’s goals to support the free trade of goods and services.

Alternatively, if OMB does not completely exempt local procurement from Section 1605, it should issue a public interest waiver to exempt all municipal procurement. As noted above, municipal procurement is primarily covered by state purchasing statutes and municipalities have no experience in applying federal procurement requirements.

If OMB does not exempt local procurements from Section 1605, OMB should interpret the international trading agreements “savings clause” as applying not only to the federal government, but also to governments at the state and local levels. Section 1605 was clear in that all ARRA funds should be used “in a manner consistent with U.S. obligations under international agreements,” not just to the states and a small group of cities that are party to these agreements.

If OMB chooses the latter option, it should waive for municipal projects the \$7.4 million project threshold that governs when Buy American applies on federal projects. Most municipal water and wastewater projects will fall under that \$7.4 million threshold and will be unable to benefit from the “savings clause”.

Thank you for the opportunity to express our views. Please contact me at dshea@acec.org, or 202-347-7474 if I can answer any questions or provide additional information.

Diane S. Shea
Director, Environmental and Energy Programs