



Rural Development

Rural Utilities Service

Water & Environmental Programs

1400 Independence Ave SW
Washington, DC 20250

DECISION MEMORANDUM

DATE: June 9, 2021

SUBJECT: Availability-Based Project Waiver of American Iron and Steel Requirements for two pre-engineered metal buildings for the Town of Antonito Wastewater System Improvements Project, Antonito, CO

Waiver Number: 21-002

FROM: Barbara Britton **BARBARA**
Director, **BRITTON**
Engineering and Environmental Staff
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Date: 2021.06.09 15:43:34 -05'00'

Decision: The U.S. Department of Agriculture (USDA) is hereby granting an availability-based project-specific waiver of the American Iron and Steel (AIS) requirements to the Town of Antonito, Colorado, for the purchase of two pre-engineered metal buildings (24’x35’ and 38’x42’) for its Wastewater System Improvements Project. This waiver permits the use of these buildings because no known domestic manufacturers can deliver a product that meets the project’s technical specifications in a reasonable timeframe.

This is a project-specific waiver which applies only to the use of the specified buildings for the referenced project funded by the USDA Rural Development (RD) Rural Utilities Service (RUS) Water and Waste Disposal (WWD) Loan and Grant program under the Water and Environmental Programs (WEP). Any other project that wishes to use the same item(s) must submit a separate waiver request based on the specific project circumstances.

Rationale: The AIS provision of the Consolidated Appropriations Act of 2017 (Public Law 115-31) and subsequent statutes require WEP assistance recipients to use domestic iron and steel products unless RD determines that it is necessary to waive this requirement. USDA has the authority to issue waivers in accordance with section 746 (b)(2) of P.L.115-31, which states in part: “[the requirements] shall not apply in any case or category of cases in which the Secretary of Agriculture ... or the designee of the Secretary finds that ...iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.” As per the delegation memo of July 2017, approval of project specific waivers has been delegated to the Director of WEP’s Engineering and Environmental Staff (EES).

Background of Waiver Request:

The contractor completed the foundation with a specific bolt pattern on March 24, 2021. Various equipment to be housed in the buildings has been delivered or

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is en route. Manufacturers of the equipment have advised the contractor that they can no longer store the ordered equipment, specifically the UV system and the headworks screen, and that it must be delivered. Delivery of the metal buildings has adversely affected the critical path identified in the construction schedule. Neither the contractor nor the town has the facilities to store equipment and the equipment cannot be stored outdoors.

The contractor contacted seven metal building suppliers, including three previously identified by RD as possibly being able to provide AIS compliant buildings meeting project specifications. Five of these manufacturers would not provide a quote and the two that did provide quotes indicated that their material was not domestically produced.

Assessment of Waiver Request: RD conducted market research on the supply and availability of metal buildings. RD contacted six metal buildings companies and received responses from five of them. Three of the companies indicated they could provide AIS-compliant metal buildings that appeared to meet the project specifications. This information was conveyed to the contractor, who followed up with the manufacturers, and found that they could not supply metal buildings meeting the project specifications. The Town of Antonito then submitted a formal waiver request on May 13, 2021. Per statutory requirement, the waiver request was posted on USDA RD RUS WEP's AIS website for the mandatory 15-day public comment period, and the Agency received no public comments.

Finding: USDA is granting an availability-based waiver from the AIS requirements to the Town of Antonito, Colorado, for their Wastewater System Improvements Project with respect to two pre-engineered metal buildings. This waiver permits the purchase of these buildings using WEP funds as documented in the Town of Antonito's waiver request submittal.

Legal Authority: Legal authority for the AIS requirements for WEP projects is included under the Consolidated Appropriations Act of 2017 and subsequent statutes, section, under the authority of section 746 (b)(2) of P.L.115-31.

If you have questions concerning the contents of this memorandum, please contact EES Engineering at ESEngineering@usda.gov.