

CHARLOTTE

PIPE AND FOUNDRY COMPANY

April 23, 2009

TO: Charlotte Pipe and Foundry Wholesalers and Contractors

SUBJECT: Stimulus Act "Buy America" Provision

There has been some confusion in the marketplace concerning the "Buy America" provision in the American Recovery and Reinvestment Act of 2009 – or the so-called Stimulus Act. Congress passed the bill earlier this year in an effort to jump-start the economy and support American jobs. Included in the Stimulus Act was a very strong "Buy America" provision that mandates that "[n]one of the funds appropriated or otherwise made available by this Act **may be used for a project** for the construction, alteration, maintenance, or repair of a public building or public work **unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.**" The Stimulus Act requires that the Buy American provision be applied in a manner consistent with U.S. obligations under international agreements, including free trade agreements as determined by the federal government, and provides for a government waiver under specific circumstances and upon publication of a "detailed written justification as to why the Buy American provision is being waived."

As you know, **Charlotte Pipe and Foundry** is a leading supplier of cast iron and plastic pipe and fittings. Our 108 year-old-company is **American-owned and all our cast iron and plastic products are proudly made exclusively in the United States.** Thanks to you, **we employ more than 1,350 loyal, hard working Americans who produce and market these products.** We want to protect these precious jobs and ask that you support U.S.-made cast iron and plastic pipe and fittings from Charlotte Pipe and Foundry.

Many of our competitors import competing cast iron products made in other countries such as China. Some of them have made broad claims that these foreign manufactured products are exempted from the Buy American provision and may be purchased using Stimulus Act funds, and they sometimes offer to "certify" that their products comply with various exceptions to the Buy American mandate. **Contrary to many of these claims, competing products manufactured in China are subject to the Buy American provision of the Stimulus Act unless the government waives the provision based upon authorized grounds and publishes a written justification in the Federal Register within two weeks of making that determination.**

Do not accept the assurances of importers of foreign manufactured products at face value. The Buy American provision in the Stimulus Act is far-reaching, and whether an exception or waiver of the provision will apply in a given instance requires careful analysis. Competing products that are manufactured in China are *not* exempt from the Buy American provision of the Stimulus Act by any U.S. obligation under a free trade agreement. Moreover, **the government must determine in writing that one of the waiver provisions in section 1605(b) of the Stimulus Act applies.**

It is important that you carefully scrutinize the claims of importers who solicit you to purchase foreign manufactured goods with Stimulus Act funds. For example, one manufacturer of foreign products has claimed that pursuant to an exception requiring that the Stimulus Act be enforced consistently with international trade agreements, "under NAFTA, products manufactured in Mexico, Canada and the United States must be accorded equal procurement status." This unqualified claim is incorrect. Federal law only affords equal consideration to goods and services from designated countries at or above specified threshold values; for instance, the threshold for construction contracts under the WTO Government Procurement Agreement is \$7.4 million and the threshold for NAFTA is \$8.8 million.

Another potential basis for confusion is the Stimulus Act's "unreasonable cost waiver," which permits a federal agency to make a determination to allow a project to use foreign manufactured goods or foreign construction materials if the use of products manufactured in the United States will increase the cost of the "overall project" by more than 25%. This provision is narrow and must be carefully applied. For example, the unreasonable cost waiver does not apply if the cumulative cost of the U.S. manufactured pipe for a project will be 25% greater than the cost of foreign manufactured pipe; rather the use of U.S. manufactured pipe must increase the cost of the entire project by more than 25%.

Again, we urge you to exercise great caution in assessing the claims of importers or foreign manufacturers about whether their products are eligible for use in projects funded by the Stimulus Act. In the meantime, **our associates stand ready to supply you with high quality products that are manufactured in the United States and that fully comply with the Buy American provision in the Stimulus Act.** We have the expertise, the capacity, the breadth of offering and the desire to meet your needs in every respect. Please contact us if we can assist you in any way.

Thank you for your business.

CHARLOTTE PIPE AND FOUNDRY COMPANY