



OFFICE OF WASTEWATER MANAGEMENT

WASHINGTON, D.C. 20460

DECISION MEMORANDUM

SUBJECT: Project-Specific Nonavailability Waiver of Build America, Buy America Act Requirements to the North Unit Irrigation District in Oregon, for Reinforced Polyethylene Liner

FROM: Andrew Sawyers, Director

Decision

The U.S. Environmental Protection Agency is hereby issuing a project waiver pursuant to the Buy America Preference set forth in section 70914 of the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), under the authority of section 70914(b), to the North Unit Irrigation District (NUID) in Madras, Oregon (Applicant) for reinforced polyethylene (RPE) liner. This waiver permits the use of this liner, manufactured outside of the United States, in the Main Canal Lining project, because no domestic manufacturers produce alternatives that meet the technical specifications of the project. The waiver is applicable to expenditures made for RPE liner on or after the effective date of the final waiver until April 1, 2025.

This is a project-specific waiver. Any other projects that wish to use the same product must apply for a separate waiver.

Background

The Buy America Preference set forth in section 70914 of BABA included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), requires all iron, steel, manufactured products, and construction materials used for infrastructure projects under Federal financial assistance awards be produced in the United States.

Under section 70914(b), the EPA may waive the application of the Buy America Preference in any case in which it finds that “types of iron, steel, manufactured products, or construction materials are not produced in the US in sufficient and reasonably available quantities or of a satisfactory quality.” All waivers must have a written explanation for the proposed determination; provide a period of not less than fifteen (15) calendar days for public comment on the proposed waiver; and submit the proposed waiver to the Office of Management and Budget’s (OMB) Made in America Office for review to determine if the waiver is consistent with policy.

Summary

Waiver Type: Nonavailability of a domestic product in sufficient and reasonably available quantities or of a satisfactory quality.

Waiver Level and Scope: Project-level waiver for a single product for a single project within one award.

Waiver Description: Project-specific nonavailability waiver of BABA requirements to the NUID in Oregon, for RPE liner for the Main Canal Lining Project.

Project Summary: In its Main Canal Lining Project, the Applicant seeks to line an irrigation canal in Madras, Oregon. The purpose of this project is to line 1.5 miles of the Applicant's Main Canal to address subterranean seepage that inundates private property. Additionally, this project will aid the Applicant in its water conservation efforts.

During the dry season, the Applicant anticipates wildlife will cross the canal. The technical specifications of the project indicate RPE material is best suited for the project due to its increased puncture resistance. Project specifications were reviewed and approved by the Bureau of Reclamation, the canal owner.

Alternative materials were considered but rejected by professional project engineers.

The EPA conducted thorough market research in November 2023, during which ten (10) RPE manufacturers were contacted (all potential manufacturers identified). No (zero) manufacturers indicated they were able to produce a BABA-compliant RPE liner that meets the technical specifications of the project.

Liner installation needs to be completed during the dry months in Oregon (November through March in the area of the project), or it will have to be postponed a year. Therefore, the RPE liner installation for this project has a firm deadline of March 30, 2024. Confirmation of procurement and delivery will also need to be factored into this firm deadline.

This project is funded by an EPA Community Grant; no other federal financial assistance has been awarded to date. In addition to the grant, state and local funds will also be used in this project. Local funds are required to be spent before July 2024, and potential postponement will further impede the Applicant's ability to complete its project.

Length of the waiver: From the effective date of the final waiver until April 1, 2025.

Summary of Items Covered in the Waiver (including NAICS): This waiver is for RPE liner (NAICS code 326199), which is a Construction Material under BABA. The Applicant proposes to procure a RPE liner manufactured in Canada for \$504,000. No domestic alternative products were identified by the recipient, or through the EPA's market research completed in November 2023. The performance-based product specifications for the project call for 720,000 SF of 40-Mil black RPE Liner (85ft – 95ft width), per ASTM D751, D1777, D5034, D5035, D5884, D3786, E96, D751, D4833, D6241, D2136, D4491, D4218, D1204, D5885, and G-154 standards.

Description of Efforts Made to Avoid the Need for a Waiver

As documented in the Applicant's waiver request, it conducted research to select appropriate materials for the project. Through this process, the Applicant determined that RPE was the material best suited for its project due to the puncture resistance, warranty, and the performance specifications of the project.

The Applicant attempted to obtain a BABA certification letter from a RPE liner manufacturer; however, the Applicant learned the RPE liner did not meet the BABA requirements.

Following receipt of the Applicant's waiver request, the EPA also performed independent product research to identify a potential domestic manufacturer of RPE liner. The market research process included thorough review of the waiver request submission, examination of domestic manufacturer catalogs and other technical data and marketing materials, personal communication with domestic manufacturers, inquiries of regional project officers, and outreach to contractors and engineers with expertise and familiarity with the project. During market research, the EPA contacted ten (10) potential manufacturers and suppliers for the RPE liner attempting to identify potential domestic manufacturers of RPE liners. When contacted, no (zero) manufacturers indicated they could produce a BABA-compliant RPE liner meeting the technical specifications of the project.

Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB M-24-02, agencies are expected to assess "whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products" as appropriate before granting a public interest waiver. The EPA's analysis has concluded that this assessment is not applicable to this waiver as this waiver is not based on the cost of foreign-sourced products.

Summary of Public Comments

A memorandum soliciting public comments and the Applicant's waiver request were posted on the EPA's public facing webpage and a notice of the waiver request was also posted to the Made in America website on January 5, 2024, to satisfy the requirement to publish any proposed project-specific waiver and provide the public with fifteen (15) days to submit comments. The EPA sought public and industry comment from all interested parties and encouraged potential manufacturers of the product in question to submit comments regarding anticipated timeframes for shifting manufacturing to a domestic market. The comment period for the proposed waiver closed on January 21, 2024. One entity commented regarding the Applicant's material selection, then withdrew its comment after further consideration. The EPA, nonetheless, provided the comments to the applicant for their information.

Description of Award

Recipient Name and/or Unique Entity Identifier (UEI): North Unit Irrigation District; HQUJJG9FYN4

Federal Financial Assistance Identification Number (FAIN): N/A

Federal Financial Assistance Listing Name: Congressionally Mandated Projects

Federal Financial Assistance Listing Number: 66.202

Federal Financial Assistance Funding Amount: \$550,000

Total Cost of Infrastructure Expenditures: \$693,750