



OFFICE OF GROUND WATER AND DRINKING WATER

WASHINGTON, D.C. 20460

DECISION MEMORANDUM

SUBJECT: Project-Specific Nonavailability Waiver of Build America, Buy America (BABA) Act Requirements to the South Adams County Water and Sanitation District in Colorado for Medium Voltage Accessories, Variable Frequency Motor Controllers, Flow Measurement, Level Measurement, Pressure Measurement, Temperature Measurement, and Ion Exchange Systems for the Klein Facility Enhancement Project

FROM: Jennifer L. McLain, Director

Decision

The U.S. Environmental Protection Agency is hereby issuing a project waiver pursuant to the domestic preference set forth in section 70914 of the Build America, Buy America (BABA) Act included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), under the authority of section 70914(b), to the South Adams County Water and Sanitation District (Applicant) for the purchase of medium voltage accessories, variable frequency motor controllers, flow measurement, level measurement, pressure measurement, temperature measurement, and ion exchange systems. This waiver permits the use of medium voltage accessories, variable frequency motor controllers, flow measurement, level measurement, pressure measurement, temperature measurement, and ion exchange systems because no known domestic manufacturers produce alternatives that meet the technical specifications of the project. This waiver is applicable to expenditures made for the specified products, for the Klein Facility Enhancement project funded by the Drinking Water State Revolving Fund (DWSRF), on or after the effective date of the final waiver until December 31, 2029.

This is a project-specific waiver. Any other project that wishes to use the same products must apply for a separate waiver.

Background

The Buy America Preference set forth in section 70914 of the 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 US.

Under section 70914(b), the EPA may waive the application of the Buy America Preference, in any case in which it finds that: applying the domestic content procurement preference would be inconsistent with the public interest; 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; or the inclusion of iron, steel, manufactured products, or construction materials produced in the U.S. will increase the cost of the overall project by more than 25 percent. 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 multiple products for a single project. No other project will utilize the waiver.

Waiver Description: Project-specific nonavailability waiver of BABA requirements to the South Adams County Water and Sanitation District (SACWSD), for medium voltage accessories, variable frequency motor controllers, flow measurement, level measurement, pressure measurement, temperature measurement, and ion exchange systems.

Project Summary: Construction of a new water treatment plant which utilizes ion exchange for the removal of Perfluorooctane Sulfonate (PFOS), and Perfluorooctanoic Acid (PFOA) and other per- and polyfluoroalkyl substances (PFAS). Project elements include the construction of the ion-exchange (IX) system, associated infrastructure, new building housing the electrical and control rooms, wet wells, piping, electrical equipment, and associated appurtenances.

Length of the waiver: From the effective date of the final waiver until December 31, 2029.

Summary of Items Covered in the Waiver (including NAICS):

The following items are covered under this waiver:

Medium voltage accessories

- NAICS: 423610

Variable frequency motor controllers

- NAICS: 334513

Flow measurement

- NAICS: 334513

Level measurement

- NAICS: 334513

Pressure measurement

- NAICS: 334513

Temperature measurement

- NAICS: 334513

Ion exchange systems

- NAICS: 221310

Description of Efforts Made to Avoid the Need for a Waiver

Both the South Adams County Water and Sanitation District and the EPA made every effort to identify domestically produced medium voltage accessories, variable frequency motor controllers, flow measurement, level measurement, pressure measurement, temperature measurement, and ion exchange systems. This is documented in both the waiver request and in the description of the EPA's extensive research efforts listed below.

Market research concluded on June 3, 2024. 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, and outreach to contractors and engineers with expertise and familiarity with the project. During market research, the EPA contacted:

- 8 manufacturers and suppliers of variable frequency motor controllers ("variable frequency drives").
- 8 manufacturers and suppliers of ion exchange systems.
- 9 manufacturers and suppliers of power actuated valve actuators ("electric actuators").
- 11 manufacturers and suppliers of medium voltage cable accessories.
- 9 manufacturers and suppliers of panelboards.
- 10 manufacturers and suppliers of motor control centers.
- 7 manufacturers and suppliers of enclosed controllers.
- 9 manufacturers and suppliers of programmable logic controllers.
- 11 manufacturers and suppliers of flow measurement.
- 11 manufacturers and suppliers of level measurement.
- 9 manufacturers of pressure measurement.
- 10 manufacturers of temperature measurement.

The EPA identified these manufacturers in an attempt to find all potential domestic manufacturers of the above-mentioned products. As part of the EPA's and the assistance recipient's market research, BABA compliant manufacturers were identified for the following products: motor control centers, programmable logic controllers, enclosed controllers, and panelboards. Therefore, South Adams County Water and Sanitation District is no longer requesting to waive these items. No (zero) manufacturers were identified that could produce BABA-compliant medium voltage accessories, variable frequency motor controllers, power actuated valve actuators, flow measurement, level measurement, pressure measurement, temperature measurement, and ion exchange systems which meet the technical performance 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 OMB's Made in America website on October 4, 2024, to satisfy the required fifteen (15) day-public comment period. The EPA sought public comment from all interested parties and encouraged potential manufacturers of the products in question to submit comments regarding anticipated timeframes for shifting to domestic manufacturing that would be compliant with BABA. The comment period for the proposed waiver closed on October 22, 2024.

The EPA received five (5) public comments over the course of the public comment period. One (1) public comment from a manufacturer indicated they could provide BABA compliant flow measurement and level measurement. The community confirmed these products did not meet the technical performance specifications for the project. Two (2) public comments from electric actuator manufacturers expressed the capability to provide BABA compliant electric actuators. After review, the Applicant has decided to utilize the EPA's general applicability De Minimis waiver and is no longer requesting a nonavailability waiver for this product. One (1) comment from a manufacturer shared information on their pressure measurement products. The Applicant had already decided to utilize some of this manufacturer's products, which are BABA compliant. The other pressure measurement products could not be identified domestically. One (1) comment from a supplier expressed interest in providing certain products, however upon further evaluation of the specification, the commenter determined that they do not carry the products requesting to be waived.

Description of Award

Recipient Name and/or Unique Entity Identifier (UEI): South Adams County Water and Sanitation District- WMYPSDHXA8T1

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

Federal Financial Assistance Listing Name: Drinking Water State Revolving Fund

Federal Financial Assistance Listing Number: 66.468

Federal Financial Assistance Funding amount: \$77,959,752

Total Cost of Infrastructure Expenditures: \$80,000,000