



OFFICE OF LAND AND EMERGENCY MANAGEMENT

WASHINGTON, D.C. 20460

SOLICITATION OF PUBLIC COMMENT FOR PROJECT-SPECIFIC BUILD AMERICA, BUY AMERICA NONAVAILABILITY WAIVER PROPOSAL

SUBJECT: UNDER EVALUATION: Project-Specific Nonavailability Waiver of Build America, Buy America Act (BABA) Manufactured Products Requirements for Lexington-Fayette Urban County Government for an optical sorter and robotic sorting equipment

Introduction

This solicitation of public comment by the U.S. Environmental Protection Agency (EPA) is to evaluate a BABA waiver request submitted by an assistance recipient based on nonavailability of products for a single project. This solicitation of public comment does not represent a final agency decision. The purpose of this proposal is to inquire whether potential alternative domestic products may be available that were not identified by the assistance recipient or through the EPA's domestic product research efforts, and whether other factors should be considered in the evaluation of a waiver.

The EPA has completed its market research efforts and was unable to identify alternative domestic products meeting the performance-based specifications, in sufficient and reasonably available quantities and of a satisfactory quality. The EPA makes every effort to locate domestic alternative products through its waiver process and the public comment period provides a meaningful opportunity to vet the Agency's interim research. In the EPA's experience, a viable domestic product is identified through public comment in many cases. Through this public comment period, commenters may provide information that indicates a waiver may not be needed. For example, if a specified item is found to be domestically available, the EPA would not issue a final waiver.

Public comments are requested for 15 days (specific dates noted on the EPA's website). Please submit comments to BABA-OLEM@epa.gov. Please include information in the subject of the email identifying it as a public comment on this waiver request, such as "Waiver Comment: Lexington-Fayette Urban County Government" or similar.

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 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: 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

Proposed Waiver: The Environmental Protection Agency is soliciting comments regarding whether to issue a project waiver of the requirements of the manufactured products requirements of section 70914 of the BABA included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), for use in the Lexington-Fayette Urban County Government's SWIFR infrastructure project for an optical sorter and robotic sorting equipment.

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

Waiver Level and Scope: Project level waiver for multiple products for a single project. No other project will utilize the waiver.

Proposed Waiver Description: Project-specific nonavailability waiver of BABA requirements to the Lexington-Fayette Urban County Government (LFUCG) for an optical sorter and robotic sorting equipment for the Solid Waste Infrastructure for Recycling (SWIFR) grant.

Project Summary: LFUCG seeks to bolster their role in the regional materials management system by ensuring the municipally-owned and operated Materials Recovery Facility operates efficiently and reliably. By introducing new technology into strategic locations on the sorting line, the facility can collect more types of material from the surrounding region thereby reducing contamination, process it efficiently and cost effectively, and produce feedstock to transport to local, regional, and statewide markets to contribute to the circular economy. To do so, LFUCG intends to purchase an optical sorter for sortation and recovery of polypropylene plastics (PP), and robotics to improve sortation, quality, and quantity of high-density polyethylene (HDPE) plastics. The addition of this equipment would aid in reducing the current contamination rate of nearly 35% and save on disposal costs which are over \$450,000 annually. It's estimated that over 500 tons of polypropylene would be available for capture through the waste stream, reducing LFUCG's current contamination rate by nearly 6.5%. With the addition of robotics that will target recovery of PP and the missed HDPE and polyethylene terephthalate (PET) left on the last chance line, there is potential for reducing the contamination rate by an additional 10%.

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

Summary of Items Covered in the Proposed Waiver (including NAICS): LFUCG is seeking a waiver for an optical sorter and robotic sorting equipment (NAICS Code 333248; PSC Code 4250). The optical sorter and robotic sorting equipment are classified as manufactured products pursuant to BABA. The County Government proposes to procure optical sorter and robotic sorting equipment that does not meet the BABA domestic content requirements because no BABA-compliant product that meets the project specifications was identified by the recipient, or through the EPA's market research completed in October and November of 2025.

Description of Efforts Made to Avoid the Need for a Waiver

Both LFUCG and the EPA made every effort to obtain a BABA-compliant optical sorter and robotic sorting equipment that met the grantee's required specifications. This is documented in the County's waiver request and supporting documentation, and in the description of the EPA's extensive research efforts listed below.

Following the EPA's guidance, LFUCG conducted extensive research in 2025, reviewing product information for companies that sell optical sorter and robotic sorting equipment. LFUCG made a good faith effort to identify any alternative domestic compliant products that met project specifications. Eight vendors producing Materials Recovery Facility (MRF) infrastructure equipment were contacted during the solicitation process. A Request for Proposals (RFP) was sent out on March 7, 2025 to over 600 vendors to gather information about companies that would be able to meet the specifications of the scope of the project. While the minimum RFP for LFUCG is open for 30 days, this RFP was opened for 70 days to give vendors ample time for questions and proposal development. The RFP also included an optional pre-proposal meeting on-site on March 31, 2025.

LFUCG built into the RFP process, time for questions and amendments to the RFP. The RFP referenced the recommended BABA language and requirements to meet compliance. The RFP requested that information be provided in its proposal package, to include compliance with SWIFR Grant requirements including BABA. The scoring criteria also considered whether the vendor met BABA requirements. Through this review, the assistance recipient found no product that met their required specifications and was BABA compliant.

The County submitted the official waiver request to the EPA in July 2025. The EPA conducted market research using the key specifications provided by the assistance recipient. The EPA used its own contract vehicle to conduct additional market research. The EPA's market research identified 3 sources that could potentially provide a solution. The EPA instructed the assistance recipient to follow up with the potential companies. The assistance recipient did so and noted that the manufacturers either did not respond with adequate documentation demonstrating that they meet the required specifications, or do not manufacture products with the required specifications that are needed for the optical sorter and robotic sorting equipment. For example, the manufacturers identified were not able to provide assurance that their products had systems controls integration or mechanical integration with existing material recovery facility infrastructure.

Anticipated Impact if No Waiver is Issued

Absent a waiver, the recipient would fail to meet its grant workplan objectives because the other products do not meet required specifications. Without an optical sorter and robotic sorting equipment that incorporates the key specifications such as systems integration, LFUCG would have to expend a significant amount of time and resources for systems maintenance and upkeep that may result in higher cost to the county in the long term. For example, one manufacturer stated that meeting the specifications would require ancillary equipment, adding about 35% to the project's costs. While LFUCG is taking multiple steps in reducing the contamination rate to include a waste reduction committee to discuss and implement policy changes, modifying procedures to accept materials that are mixed with soiled products, and educating the communities we serve about the products we accept; the need for this equipment to improve sortation and recovery is great. Without the waiver, the project could be significantly delayed or cancelled while the community seeks other, non-federal funding.

Description of Award

Recipient Name and/or Unique Entity Identifier (UEI): Lexington-Fayette Urban County Government (LFUCG) - VM1GLHWZXA96

Federal Financial Assistance Identification Number (FAIN): 03D04724

Federal Financial Assistance Listing Name: Solid Waste Infrastructure for Recycling Grants

Federal Financial Assistance Listing Number: 66.920

Federal Financial Assistance Funding amount: \$1,800,000

Total Cost of Infrastructure Expenditures: \$2,020,000