



## OFFICE OF GROUND WATER AND DRINKING WATER

WASHINGTON, D.C. 20460

### DECISION MEMORANDUM

**SUBJECT:** Project-Specific Nonavailability Waiver of Build America, Buy America Act Requirements to the McLean Sheridan Rural Water District in North Dakota, for Split-System Air Conditioners, Motor Control Centers, and Panelboards

**FROM:** Jennifer L. McLain, Director

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#### **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 McLean Sheridan Rural Water District in North Dakota (Applicant) for the purchase of split-system air conditioners, motor control centers, and panelboards. This waiver permits the use of split-system air conditioners, motor control centers, and panelboards 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 Phase 3 WTP Improvements project funded by the Drinking Water State Revolving Fund (DWSRF), on or after the effective date of the final waiver until December 31, 2028.

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 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 United States 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 multiple products for a single project. No other project will utilize the waiver.

Waiver Description: Project-specific nonavailability waiver of BABA requirements to the Applicant for split-system air conditioners, motor control centers, and panelboards for the Applicant's Phase 3 WTP Improvements Project.

Project Summary: The proposed project location is in Turtle Lake, North Dakota. The project consists of improvements at the water treatment plant and wellfield, including building space, a filtration system, and chemical feed system improvements. The project also includes the demolition of an existing administration space.

The project requires a waiver because no domestic alternatives were available for consideration.

Length of the waiver: From the effective date of the final waiver until December 31, 2028, the estimated remainder of the project.

Summary of Items Covered in the Proposed Waiver (including NAICS): The Applicant is seeking a waiver for split-system air conditioners (NAICS code 333415), motor control centers (NAICS code 335314), and panelboards (NAICS code 335313), all of which are manufactured products under BABA. The Applicant proposes to procure non-domestic split-system air conditioners, non-domestic motor control centers, and non-domestic panelboards. No domestic alternative products were identified by the assistance recipient, or through the EPA's market research completed in March 2024.

The project requires split-system air conditioners consisting of separate evaporator-fan and compressor-condenser components. Accessories will include a low voltage thermostat, automatic-reset timer, and refrigerant line kits.

The project requires motor control centers of the indoor type, with Class II Type B construction in accordance with the applicable NEMA standards. Motor control centers shall bear the U.L. label and shall bear a U.L. "suitable for use as service entrance equipment" label.

This project requires panelboards including bolt-on, thermal magnetic circuit breakers with a minimum interruption rating of 22,000 amperes R.M.S (minimum) unless noted otherwise. Circuit breakers shall have a trip indication different from the "off" or "on" position. NEMA 1 surface mount enclosure shall be utilized unless otherwise indicated.

### **Description of Efforts Made to Avoid the Need for a Waiver**

Both the Applicant and the EPA made every effort to identify domestically produced split-system air conditioners, motor control centers, and panelboards. This is both documented in the Applicant's waiver request, and in the description of EPA's extensive research efforts listed below.

The Applicant conducted research to find a domestic manufacturer of BABA-compliant products and provided information to the EPA demonstrating that no domestic manufacturers of those products are available that meet the project’s technical specifications.

Following receipt of the Applicant’s waiver request, the EPA also performed independent product research to identify potential domestic manufacturers of split-system air conditioners, motor control centers, and panelboards. During market research, the EPA contacted ten (10) manufacturers and suppliers for split-system air conditioners, ten (10) manufacturers and suppliers for motor control centers, and ten (10) manufacturers and suppliers of panelboards. The EPA also contacted ten (10) manufacturers and suppliers for static uninterruptible power supply systems, which were included in the original waiver request. When contacted, two (2) manufacturers for static interruptible power supply systems indicated potential to meet the specifications of the project with BABA-compliant products. The project has decided to utilize one of these options for static interruptible power supply systems and is no longer requesting this product to be waived. No (zero) manufacturers indicated they could produce BABA-compliant split-system air conditioners, motor control centers, or panelboards.

#### **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 June 7, 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 manufacturing to a domestic market. The comment period for the proposed waiver closed on June 21, 2024. The EPA received no (zero) public comments, and therefore no substantive changes were made between this waiver and the version that was posted for public comment.

#### **Description of Award**

Recipient Name and/or Unique Entity Identifier (UEI): McLean Sheridan Rural Water District – D8JKXNMQDZD8

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 (SRF)

Federal Financial Assistance Funding amount:

\$8,214,213

Total Cost of Infrastructure Expenditures:

\$8,578,950