



OFFICE OF LAND AND EMERGENCY MANAGEMENT

WASHINGTON, D.C. 20460

October 17, 2024

DECISION MEMORANDUM

SUBJECT: Project-Specific Nonavailability Waiver of Build America, Buy America Act (BABA) Requirements to the Gun Lake Tribe in Michigan, for Aerobic Digester

FROM: Barry N. Breen,
Principal Deputy Assistant Administrator

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 Gun Lake Tribe, Shelbyville, Michigan (Applicant) for an aerobic digester. This waiver permits the use of an aerobic digester, manufactured outside of the United States, in the Gun Lake Tribe's project, because no domestic manufacturers produce alternatives that meet the technical specifications of the project. The waiver is applicable to expenditures made for an aerobic digester on or after the effective date of the final waiver until December 31, 2028.

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 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 one product for a single project. No other project will utilize the waiver.

Proposed Waiver Description: Project-specific nonavailability waiver of BABA requirements to the Gun Lake Tribe in Michigan, for an aerobic digester and for the Solid Waste Infrastructure for Recycling grant.

Project Summary: The proposed project location is with the Gun Lake Tribe in Michigan. The project focuses on encouraging environmentally sound post-consumer materials management that will result in a decrease in the generation of municipal solid waste and/or an increase in the diversion of municipal solid waste from landfills and incineration. The project will provide access to anaerobic digestion and composting for tribes and tribal members of intertribal consortia for food waste management/diversion through the operation of a large-scale food waste digester. Implementation will reduce organic materials going to local landfills. The post-digester output of a compost/nutrient product will prevent additional effluent needing treatment. The project will also support the Tribe's significant efforts to advance the circular economy within Tribal operations and within southwest Michigan.

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

Summary of Items Covered in the Proposed Waiver (including NAICS): The Gun Lake Tribe is seeking a waiver for an aerobic digester (NAICS code 332420). The aerobic digester is a BABA Manufactured product. The Gun Lake Tribe proposes to procure a non-domestic aerobic digester because no domestic alternative product was identified by the recipient, or through the EPA's market research completed in July 2024. The project specifies an aerobic digester with an automatic chain/hydraulic lifter, automatic bulk-hopper system (minimum 1,500 lb. storage), auger and food waste shredding device. The digester must have the capacity to operate a minimum of 2,000 lbs. of food waste per day. The aerobic food waste digester must have a compost/nutrient product after digestion.

Description of Efforts Made to Avoid the Need for a Waiver

Both the Gun Lake Tribe and the EPA made every effort to obtain a domestically produced aerobic digester. This is both documented in the Gun Lake Tribe's waiver request, and in the description of EPA's extensive research efforts listed below. EPA conducted market research that concluded on July 29, 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 inquiries and review of existing waiver requests by EPA personnel. During market research, EPA contacted (8) manufacturers and suppliers for aerobic digesters. EPA's highly experienced technical contractors identified these manufacturers in their attempt to find all potential domestic manufacturers of the above-mentioned product. When contacted, (6) manufacturers for aerobic digesters responded, with (1) indicating they could supply a product that was BABA compliant. Prior to submission of the waiver request, the tribe communicated with this manufacturer and determined that the product in question did not meet the required specifications. At EPA's request, the tribe contacted the manufacturer again and confirmed that the product had not changed and did not meet the tribe's specifications. The tribe's specification requires an aerobic digester that produces a compost/nutrient end-product.

Summary of Public Comments

A memorandum soliciting public comments on 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 September 17, 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. The comment period for the proposed waiver closed on October 2, 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): The Gun Lake Tribe – FEN3G1SWZ7B9

Federal Financial Assistance Identification Number (FAIN): 00E03641

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

Federal Financial Assistance Listing Number: 66.92

Federal Financial Assistance Funding amount: \$1,084,454

Total Cost of Infrastructure Expenditures: \$480,780