



OFFICE OF WASTEWATER MANAGEMENT

WASHINGTON, D.C. 20460

DECISION MEMORANDUM

SUBJECT: Project-Specific Nonavailability Waiver of Build America, Buy America Act (BABA) Requirements to the Borough of Island Heights in New Jersey, for Ultrasonic Water Meters

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 Borough of Island Heights in New Jersey (Applicant) for ultrasonic water meters. This waiver permits the use of these meters, manufactured outside of the United States, in the Applicant's Water Meter Replacement Project (project), because no domestic manufacturers produce alternatives that meet the technical specifications of the project. The waiver is applicable to expenditures made for the ultrasonic water meters on or after the effective date of the final waiver until June 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 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 a single product for a single project. No other project will utilize the waiver.

Waiver Description: Project-specific nonavailability waiver of BABA requirements to the Borough of Island Heights in New Jersey, for ultrasonic water meters for the Water Meter Replacement Project.

Project Summary: The purpose of this project is the replacement of the water meters to increase operational reliability and efficiency, enhance overall system integrity, and reduce the amount of unaccounted-for water losses in the system. The Borough of Island Heights, Ocean County, New Jersey, currently has a systemwide inventory tabulation for all water meters. The meter data inventory was tabulated from the Applicant's total system usage and meter list spreadsheets. The inventory includes commercial and residential meters. Currently, there are 918 meters throughout the Borough ranging from sizes of 5/8-inch to 3-inch. The Applicant determined that the existing meters have reached the end of their useful life and need replacement. The new meters will replace the antiquated metering equipment to ensure more accurate readings, which will promote water conservation measures and result in a decrease in wastewater flow.

Length of the waiver: From the effective date of the final waiver until June 30, 2025, the estimated date of project completion.

Summary of Items Covered in the Waiver (including NAICS): The recipient sought a waiver for 920 ultrasonic water meters ranging from sizes of 5/8-inch to 3-inch (NAICS code 221300), which are manufactured products under BABA. The Applicant intends to procure these ultrasonic water meters of non-domestic origin. No domestic alternative products were identified by the recipient, or through the EPA's market research completed in September 2024.

The Borough has chosen to install ultrasonic meters as opposed to mechanical meters because the ultrasonic meters do not have any moving parts and utilize ultrasonic sound waves to measure the velocity of the water. Due to the lack of moving parts and absence of frictional forces, the meter is more capable of capturing lower flow rates (and possible leaks) than their mechanical alternatives. Additionally, the proposed meter's accuracy is superior. This accuracy is sustainable over the life of the meter because no moving parts will degrade over time.

Description of Efforts Made to Avoid the Need for a Waiver

Separate from the EPA's market research, the Applicant made a good faith effort to identify a BABA compliant product meeting the project's specifications. The EPA's 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 thirteen (13) manufacturers and suppliers of the ultrasonic water meters. There were no (zero) manufacturers who indicated they could make BABA compliant ultrasonic water meters meeting the project's technical specifications. Of note, one (1) manufacturer proposed an alternative domestic meter that was BABA compliant. Upon further communication between the Applicant and manufacturer, it was confirmed that the alternative meter

would not meet the project's specifications and metering requirements.

Based on all currently available information, there is no domestic ultrasonic water meter that meets the requirements of this project's specifications and satisfies the metering technology required by the Applicant.

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 October 9, 2024. This satisfies 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 October 24, 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): Borough of Island Heights, NJ

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

Federal Financial Assistance Funding Amount: \$843,965.00

Total Cost of Infrastructure Expenditures: \$843,965.00