



OFFICE OF WASTEWATER MANAGEMENT

WASHINGTON, D.C. 20460

DECISION MEMORANDUM

SUBJECT: Project-Specific Nonavailability Waiver of Build America, Buy America Act Requirements to the City of Myrtle Creek in Oregon, for a Membrane Filtration Water Treatment Pod

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 City of Myrtle Creek in Oregon (Applicant) for a single membrane filtration water treatment pod. This waiver permits the use of a membrane filtration water treatment pod, manufactured outside of the United States, in the Applicant's Water Infrastructure Improvement 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 membrane filtration water treatment pod on or after the effective date of the final waiver until January 2027. 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 Applicant for a membrane filtration water treatment pod.

Project Summary: The purpose of this project is to install a third membrane filtration water treatment pod in the Applicant's water treatment plant. The plant was initially installed 10 years ago and was designed to have three pods. Due to financial constraints at that time, only two pods were installed. The recipient seeks to purchase the third treatment pod and integrate it with the existing two pods, finishing the treatment plant as it was originally designed.

Length of the waiver: From the effective date of the final waiver until project completion in January 2027.

Summary of Items Covered in the Waiver (including NAICS): The Applicant is seeking a waiver for a membrane filtration water treatment pod (NAICS code 221310), which is a BABA manufactured product. The Applicant proposes to procure a membrane filtration water treatment pod of non-domestic origin. No domestic alternative products were identified by the recipient, or through the EPA's market research completed in August 2024.

Standard system components of the membrane filtration water treatment pod consist of membrane modules, feed tank, one feed pump, one reverse filtration system, manual and automatic valving, filtrate flow meter, pressure and temperature sensors, and PLC controls.

Description of Efforts Made to Avoid the Need for a Waiver

The Applicant has evaluated the potential for utilizing another vendor. They were unable to find another similar product that was domestically produced that would meet the project specifications and integrate with the existing control systems. Subsequently, the EPA was unable to identify a domestically produced membrane filtration water treatment pod meeting the technical specifications of the project during the market research process completed August 2024.

Market research included thorough review of the waiver request submission, examination of domestic manufacturer catalogs and other technical data and marketing materials, and communication with domestic manufacturers. During market research, ten (10) manufacturers were identified and contacted. No (zero) manufacturers indicated that they could produce a comparable BABA-compliant membrane filtration water treatment pod. Based on the technical evaluation conducted, the claim that BABA-compliant membrane filtration water treatment pod that meets the project's specifications are not available is supported.

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, 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 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): GTMEBV4PMWA3

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

Federal Financial Assistance Funding Amount: \$2,380,000.00