



## 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 San Leandro in California, for a Modular Membrane Aerated Biofilm Reactor System and Modular Geocell Units for Woodchips

**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 San Leandro in California (Applicant) for a modular membrane aerated biofilm reactor (MABR) system and modular geocell units for woodchips. This waiver permits the use of these products, manufactured outside of the United States, in the San Leandro Water Pollution Control Plant (WPCP) project funded through the San Francisco Bay Program, because no domestic manufacturers produce alternatives that meet the technical specifications of the project. The waiver is applicable to expenditures made for these products from the effective date of the final waiver until January 31, 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 two products for a single project. No other project will utilize the waiver.

Waiver Description: Project-specific nonavailability waiver of BABA requirements to the City of San Leandro in California, for a MABR system and modular geocell units for woodchips for the project.

Project Summary: The project in San Leandro, CA, will include installation of a modular nitrification system to convert ammonia from existing secondary-treated wastewater. A 6.9-acre wastewater retention pond will also be transformed into a multi-benefit treatment wetland. The project will incorporate a hybrid design combining vegetated subsurface flow wetlands along the basin perimeter slopes with shallow wetland areas. The modular geocell units will hold woodchips that will serve as media for denitrification, while allowing rapid flow-through to the open water wetland portion of the treatment system. This design will enhance nitrogen removal rates and create wet meadow habitats along the basin perimeter and potential interior dike features. The new treatment wetland will process up to 0.95 million gallons per day of effluent from the WPCP, achieving 75-90% nitrogen removal efficiency. The polished wastewater will then be discharged directly into San Francisco Bay through an existing outfall on the basin's western edge under an existing discharge permit.

Length of the waiver: From the effective date of the final waiver until January 31, 2027, the estimated date of project completion.

Summary of Items Covered in the Waiver (including NAICS): The Applicant sought a waiver for a modular MABR system (NAICS code 237110) and modular geocell units for woodchips (NAICS code 326199) which are manufactured products under BABA. The Applicant intends to procure the modular MABR system and geocell units for woodchips of non-domestic origin. No domestic alternative products were identified by the Applicant, or through the EPA's market research completed in August 2024.

Of note, the original waiver request from the recipient to EPA included linear low-density polyethylene (LLDPE) geomembrane liner. A potential domestic manufacturer of the LLDPE liner was found through the EPA's market research. After further communication, the Applicant was able to acquire a BABA-compliant LLDPE liner that met the needs and technical specifications of the project.

## **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 alternative domestic compliant products that met project 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 for the modular MABR system, the EPA contacted nine (9) manufacturers and suppliers. No (zero) manufacturers indicated that they could produce a comparable BABA-compliant modular MABR system.

During market research for the modular geocell units, the EPA contacted ten (10) manufacturers and suppliers. Two (2) manufacturers indicated that they could potentially provide comparable BABA-compliant geocell units. Upon further communication between the Applicant and potential manufacturers, it was confirmed that they could not provide BABA-compliant geocell units that met the project's needs and technical specifications.

Based on all currently available information, there are no domestic modular MABR systems and modular geocell units that meet the requirements of this project's specifications and satisfy the needs 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 November 18, 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 December 3, 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): City of San Leandro, California

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

Federal Financial Assistance Listing Name: San Francisco Bay Program

Federal Financial Assistance Listing Number: 66.126

Federal Financial Assistance Funding Amount: \$2,975,302.00

Total Cost of Infrastructure Expenditures: \$3,100,000.00