



OFFICE OF GROUND WATER AND DRINKING WATER

WASHINGTON, D.C. 20460

DECISION MEMORANDUM

SUBJECT: Project-Specific Public Interest Previously Planned Project Waiver of Build America, Buy America Act (BABA) Requirements to the Village of Glen Carbon in Illinois (Village), for its Ground Water Well and Water Treatment Plant Project

FROM: Jennifer L. McLain, Director

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 Village of Glen Carbon in Illinois (Applicant) for its Ground Water Well and Water Treatment Plant project. This waiver permits the purchase and use of non-domestic construction materials and manufactured products, except for masonry and lumber where domestically available. Iron and steel products will be domestic. This waiver is applicable to expenditures made for those categories of products for the Ground Water Well and Water Treatment Plan project funded by the Drinking Water State Revolving Fund (DWSRF), on or after the effective date of the final waiver until December 31, 2029.

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 domestic preference in any case in which it finds that: (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) 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 (3) 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: Public Interest Previously Planned Project – applying the domestic content procurement preference would be inconsistent with the public interest for this previously planned project where significant design and planning took place prior to May 14, 2022, the effective date of BABA.

Waiver Level and Scope: Project-level waiver for a single project. No other project will utilize the waiver.

Waiver Description: This waiver permits the use (or purchase) of non-domestic construction materials and manufactured products, except for masonry and lumber, where domestically available. Iron and steel products will be domestic.

Project Summary: The project location is in the Village of Glen Carbon, Illinois. The project consists of the construction of three potable water supply wells; a new 3.0 million gallon per day (MGD) water treatment plant (WTP); and approximately 70 linear feet (LF) of 6-inch water main, 482 LF of 8-inch water main, and 9,500 LF of 12-inch water main. The new WTP building consists of a process area to house three horizontal pressure filters, four vertical ion exchange softeners, and chlorination, phosphate, and fluoride chemical feed systems.

Length of the waiver: From the effective date of the final waiver until December 31, 2029, the estimated remainder of the project.

Summary of the Project Timeline and Background for the Waiver: This project will create a reliable and safe supply of drinking water for the residents of the Village of Glen Carbon and ensure that the public is protected from contaminants, including iron and manganese in their finished water. It will also ensure that the public is protected from low chlorine residuals in their distribution system. In November 2018, the Village completed a preliminary engineering study to compare cost of various options for long-term water sources. In January 2019, the Village, and Illinois American Water Company (IAWC) entered a temporary, contractual, water purchase agreement until the Village could build their own well field and WTP. Between January and August 2022, the Village executed three contracts with a consulting firm to first perform a third-party review of the Village's 2018 preliminary engineering report, and later, to perform a water rate study to evaluate how the potential WTP project would impact their water rates. In April 2022, the design of the project was 90% complete. A final

contract for design and construction phase services for a new well field and WTP that included an overall schedule of completing the design and submitting permitting applications to Illinois EPA (IEPA) was executed in May 2024. In October 2022, the Village submitted a request to IEPA for a BABA waiver since the Village's project had initiated planning and design much earlier than the May 14, 2022, SRF Design Planning Waiver qualification date. IEPA responded by email stating they agreed the Village qualified for the waiver; however, when the use of federal fiscal year 2024 funds was discussed in April 2024, the Village was notified that the SRF Design Planning Waiver had been amended to limit eligibility to funding appropriated in federal fiscal years 2022 and 2023. The value of products covered under this waiver is estimated to be approximately \$15 million.

The Village of Glen Carbon will still comply with the American Iron and Steel requirement because it applies to all SRF projects and has been a requirement since 2014. Therefore, only products not otherwise covered by the AIS requirements will be waived. The following categories of products for which the BABA requirements apply are waived:

- Concrete Accessories (these will be non-ferrous and will exclude precast since it is a listed AIS product)
- Thermal and Moisture Protection
- Openings (non-ferrous)
- Coatings
- Fire Suppression
- Plumbing (non-ferrous)
- HVAC (excluding listed AIS products)
- Integrated Automation/Electrical
- Pumps, Pump Motors, and Pump Systems
- Flow Meters
- Filtration and Treatment Systems
- Miscellaneous Manufactured Products
- Miscellaneous Construction Materials (non-ferrous)
- Where Unavailable Domestically, Wood and Masonry

The Village asserts that its decision to proceed without the BABA requirements was made in good faith because it had no reasonable expectation that the SRF Design Planning Waiver would be amended to limit eligibility to funding appropriated in federal fiscal years 2022 and 2023. The EPA agrees with the assertion that the Village's decision to exclude BABA requirements from the project was made in good faith based on all the information available along the project timeline and sees no evidence that the project proceeded with the intent to circumvent the BABA requirements. The EPA also notes that the project was designed and planned to comply with AIS requirements, and AIS requirements will be met for this project.

Therefore, the EPA determines that a project-specific public interest previously planned project waiver is appropriate because applying the domestic content procurement preference would be inconsistent with the public interest and meets the conditions of a waiver in section 70914(b)(1).

Description of Efforts Made to Avoid the Need for a Waiver

From the time of preparing the preliminary engineering report to initiating contracts with a consulting firm, the Village believed the BABA requirements did not apply to their project because a design and planning waiver was available at the time and covered the project. The EPA agrees with the Village's assertions that no reasonable efforts to avoid a waiver were applicable prior to commencement of the project. In many cases, BABA requirements can be managed and accounted for during the early planning stages of a project, but compliance can be costly and complex past the design phase for infrastructure projects where significant design and planning took place prior to May 14, 2022, the effective date of BABA. Absent a waiver from the EPA, the assistance recipient would need to redesign the project, and continue to incur costs and fees for interim financing and development, and water purchase contracts, which continue to grow while construction is delayed. These costs would be borne by the Village and would exceed the funds budgeted for the project. The EPA therefore has determined this waiver is in the public interest. During the period the waiver is active, the EPA encourages the recipient, to the greatest extent practicable, to seek to purchase, acquire, or use goods, products, or materials produced in the United States.

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 December 6, 2024, to satisfy the required fifteen (15) day-public comment period. The EPA sought public comment from all interested parties. The comment period for the proposed waiver closed on December 21, 2024. The EPA received no (zero) public comments, and therefore no substantive changes were made between this waiver decision and the version that was posted for public comment.

Description of Award

Recipient Name and/or Unique Entity Identifier (UEI): Village of Glen Carbon, IL - GMDYMM6MVTE5

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 Drinking Water State Revolving Fund

Federal Financial Assistance Funding amount: \$23.3 M

Total Cost of Infrastructure Expenditures: Of the \$23.3 M, approximately \$18.8 M will be construction costs.