



OFFICE OF WASTEWATER MANAGEMENT

WASHINGTON, D.C. 20460

DECISION MEMORANDUM

SUBJECT: Project-Specific Nonavailability Waiver of Build America, Buy America Act Requirements to the Village of Lake Orion, Michigan for Duplex Ejector Systems

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 Village of Lake Orion in Michigan (Applicant) for duplex ejector systems. This waiver permits the use of these duplex ejector systems, manufactured outside of the United States, in the Applicant's Sanitary Sewer Pump Station Improvements Project, because no domestic manufacturers produce alternatives that meet the technical specifications of the project. The waiver is applicable to expenditures made for duplex ejector systems from the effective date of the final waiver until November 30, 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 Village of Lake Orion in Michigan, for duplex ejector systems for the Sanitary Sewer Pump Station Improvements Project.

Project Summary: This project consists of the rehabilitation and replacement of four sanitary pump stations: two centrifugal pump stations and two duplex ejector system stations. The project will include installing ventilation blowers for air circulation within the pump stations, electrical and control panels, electric meters and equipment racks, sump pumps, lighting, and epoxy coating of the station interiors.

The original sewage pump stations were constructed in 1971-72 with duplex ejector systems. These pump stations are located adjacent to Lake Orion, a 350-acre freshwater lake and the source of Paint Creek, a cold-water stream with a significant trout population located in Oakland County, Michigan. The pump stations are between 10 and 25 feet from the lake's edge in a densely populated residential area where any failure of the sewage pumping system risks substantial contamination to both land and water resources.

Length of the waiver: From the effective date of the final waiver until November 30, 2025.

Summary of Items Covered in the Waiver (including NAICS): The Applicant sought a waiver for duplex ejector systems, which are BABA manufactured products. The Applicant intends to procure duplex ejector systems of non-domestic origin. No domestic alternative products were identified by the Applicant, or through the EPA's market research completed in July 2024.

- Duplex Ejector Systems:
 - NAICS code – 333914
 - PSC code – 4320
 - Specifications section – 11390

Description of Efforts Made to Avoid the Need for a Waiver

The Applicant made a good faith effort to identify an alternative domestic compliant product that met project specifications. They were unable to find another similar product that was domestically produced and would meet the technical specifications of the project.

The EPA also conducted market research in July 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, and communication with domestic manufacturers.

The EPA researched and contacted 11 duplex ejector sanitary pump station manufacturers and suppliers. The manufacturers were asked whether they manufacture BABA-compliant duplex ejector systems that meet the project's specifications, and if so, what the estimated lead time would be. One manufacturer initially stated that they offer BABA-compliant products meeting project specifications.

Upon further communication between the Applicant and the manufacturer in August 2024, the Applicant determined that this manufacturer could not meet the project's technical specifications.

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 28, 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 November 12, 2024. No (zero) comments were received in response to this waiver request, 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 Village of Lake Orion

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

Federal Financial Assistance Funding Amount: \$1,750,000