

DEPARTMENT OF COMMERCE

Economic Development Administration Public Interest Previously Planned Project Waiver for the City of Phenix City, Alabama Wastewater Treatment Plant Improvement Project

1. Summary

Agency: Department of Commerce (DOC)

Waiver: DOC's Economic Development Administration (EDA) is issuing a Public Interest previously planned project Waiver of the requirements of section 70914 of the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) for clarifier, scum pumps, sludge pumps, plug valves, knife gate valves, air release valves, and electrical switchgear to be used in a Wastewater Water Treatment Plant Improvement Project in Alabama. The waiver is limited to the seven products specified above.

Applicability: This waiver action is in effect for expenditures charged to the award on or after the effective date, and will remain in effect until December 31, 2024, the estimated remainder of the project construction schedule.

Waiver type: Public Interest Waiver of non-BABA-compliant domestic products for a previously planned project where significant design and planning took place prior to May 14, 2022, the effective date of BABA. This project does not fall under the current *Economic Development Administration Buy America Projects Planned Prior to the Implementation Date of Build America, Buy America Waiver dated May 14, 2022*, and receives partial coverage from the *Department of Commerce Department-wide Public Interest Waivers for De Minimis Infrastructure Project Purchases, Small Grants, and Minor Components within Iron and Steel Products*.

Waiver level: Project-specific waiver.

Summary of items covered in the waiver: Wastewater Treatment Plant Upgrade Equipment.

Waiver justification summary: Despite the robust and wide public solicitation and direct outreach to all well-known wastewater industry manufacturers, the City did not receive any responsive bids with BABA-compliant products to complete the otherwise 90% finished project. This Federal Award was obligated in 2020, two years before the enactment of BABA and is 90% complete. Supplemental funding made the remaining phase of the project subject to BABA in 2024. The Recipient seeks a limited waiver for specific products for funds not yet reimbursed, which are not otherwise compatible with the infrastructure already installed. DOC believes the waiver is in the public interest for this previously planned project.

Length of the waiver: This waiver will be effective upon approval and will remain in effect until project completion which is currently targeted to be December 31, 2024.

Background: The Buy America Preference set forth in section 70914 of the Build America, Buy America Act 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), DOC 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 United States 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 United States will increase the cost of the overall project by more than 25%. All waivers must have a written explanation for the proposed determination; provide a period of not less than 15 days for public comment on the waiver; and submit the waiver to the Office of Management and Budget Made in America Office for review to determine if the waiver is consistent with policy.

The subject project involves upgrades to an aged wastewater treatment plant that requires new specialized equipment to properly treat the wastewater in accordance with discharge permit standards. The equipment items identified below were properly solicited and bid for construction of the project. However, vendors were unable to confirm that all products, which need to be compatible with the existing infrastructure that has already been procured and installed, were in accordance with BABA requirements.

2. Description of Award

Title of project: The City of Phenix City Wastewater Treatment Plant Upgrade

Infrastructure project description and location: The City of Phenix City Wastewater Treatment Plant Improvement Project funds upgrades to the city's only wastewater treatment plant to accommodate new and expanding industry. The EDA Investment Project phase consists of an additional aeration basin, clarifier, RAS/WAS pump station and the site work, electrical work and instrumentation associated with these items. The project is located in the City of Phenix City, Alabama.

Description of project: The City of Phenix City Wastewater Treatment Plant Improvement Project funds upgrades to the city's only wastewater treatment plant to accommodate new and expanding industry. The EDA Investment Project consists of an additional aeration basin, clarifier, RAS/WAS pump station and the site work, electrical work and instrumentation associated with these items. The plant upgrades will provide Phenix City with modern, dependable wastewater treatment services while maintaining standards imparted by the Environmental Protection Agency and the Alabama Department of Environmental Management.

Recipient Name: City of Phenix City, AL

Unique Entry Identifier (UEI): YTKCGDNFF263

Federal Financial Assistance Program: Public Works and Economic Adjustment Assistance

Federal Financial Assistance Funding Amount: \$5,717,520

3. Description of Covered Items

Manufactured products: Water treatment system including final clarifier, scum pump, RAS pump station, electrical, and valves.

4. Waiver Justification Summary

Anticipated impact if no waiver is issued: The City of Phenix City has already completed 90% of the project which was originally awarded in 2020, two years prior to the effective date of BABA. The City has leveraged significant grant and considerable loan funding to make this project constructable. The final 10% of the project is dependent on additional funding which will bring the project under the

requirements of BABA. Absent this waiver, additional planned and greatly needed wastewater upgrade projects in the City will be postponed indefinitely. Postponing these wastewater infrastructure projects will negatively affect the citizens and environment of Phenix City, because these wastewater infrastructure projects are designed to reduce inflow and infiltration in the wastewater collection system to prevent sanitary sewer overflows. This project is in the final stage and absent a waiver from DOC, the Recipient would need to redesign the project and continue to incur interest and fees for interim costs as construction is delayed.

Description of efforts made to identify domestic products: In January – March of 2024, the City conducted a wide and robust public solicitation for domestic products to complete the project. In addition, the City leveraged the experience and knowledge of P. F. Moon, Ardurra, The TDH Company, LLC; Aerzen USA Corporation, and WesTech to reach out to various U.S. water treatment manufacturers. Despite the robust and wide public solicitation and direct outreach to all well-known wastewater industry manufacturers, the City did not receive any responsive bids with BABA-compliant products.

5. 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. EDA’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.

6. Solicitation for Comments

As required under section 70914 of the IJA, EDA solicited comments from the public on this proposed waiver. This notice published on August 12, 2024, and was open for 15 days, and closed for comments on August 26, 2024.

The original waiver posted for public comment proposed to include blowers. DOC since clarified the recipient was eligible for coverage under the existing DOC Public Interest De Minimis waiver for those products. The blowers and blower equipment have therefore been removed from this waiver.

EDA received three comments in response to the waiver. The Water & Wastewater Equipment Manufacturers Association (WWEMA) requested clarification on certain aspects of the waiver and also requested an extension of the comment period. EDA provided the WWEMA with the requested clarifications but did not grant the extension request, explaining to the WWEMA that EDA followed the statutorily required public comment period for the waiver. EDA also received a comment from Inovair objecting to the inclusion of blowers and blower equipment in the waiver. However, as the blowers and blower equipment have been removed from the waiver, no action is needed in response to Inovair’s comment. Finally, EDA received a comment from VAG USA, LLC. VAG USA did not believe that it was solicited for the project and therefore could not confirm whether its products could meet the needs of the project. The Recipient stated that it did solicit VAG USA and determined that its products were not compatible with the specifications of the project. EDA and the Recipient revisited this determination upon receiving the comment from VAG USA and determined that its products were not compatible with the specifications needed for the existing infrastructure. DOC believes this waiver is in the public interest and therefore chooses to issue this waiver with no additional changes.

For more information on the Build America, Buy America preference, please reference DOC's Build America, Buy America [website](#) or MadeinAmerica.gov

Cristina Killingsworth
Acting Assistant Secretary of Commerce for
Economic Development