

SOLICITATION OF PUBLIC COMMENT FOR PROJECT-SPECIFIC BUILD AMERICA, BUY AMERICA NONAVAILABILITY WAIVER PROPOSAL

SUBJECT: UNDER EVALUATION: Project-Specific Nonavailability Waiver of Build America, Buy America Act (BABA) Requirements to the Gun Lake Tribe in Michigan, for Aerobic Digester

Intro: This solicitation of public comment by the U.S. Environmental Protection Agency (EPA) is to evaluate a BABA waiver request submitted by an assistance recipient based on nonavailability of one product for a single project. This solicitation of public comment does not represent a final agency decision. The purpose of this proposal is to inquire whether potential alternative domestic products may be available that were not identified by the assistance recipient or through the EPA's domestic product research efforts, and whether other factors should be considered in the evaluation of a waiver.

The EPA has completed its market research efforts and was unable to identify alternative domestic products meeting the performance-based specifications, in sufficient and reasonably available quantities and of a satisfactory quality. The EPA makes every effort to locate domestic alternative products through its waiver process and the public comment period provides a meaningful opportunity to vet the Agency's interim research. In the EPA's experience, a viable domestic product is identified through public comment in many cases. Through this public comment period, commenters may provide information that indicates a waiver may not be needed. For example, if a specified item is found to be domestically available, EPA would not issue a final waiver.

Public comments are requested for 15 days (specific dates noted on the EPA's website). Please submit comments to BABA-OLEM@epa.gov. Please include information in the subject of the email identifying it as a public comment on this waiver request, such as "Waiver Comment: Gun Lake Tribe" or similar.

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

Proposed Waiver: The Environmental Protection Agency is soliciting comments regarding whether to issue a project waiver of the requirements of section 70914 of the BABA included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), for an aerobic digester used in an infrastructure project funded through a Solid Waste Infrastructure for Recycling grant.

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 one product for a single project. No other project will utilize the waiver.

Proposed Waiver Description: Project-specific nonavailability waiver of BABA requirements to the Gun Lake Tribe in Michigan, for an aerobic digester and for the Solid Waste Infrastructure for Recycling grant.

Project Summary: The proposed project location is with the Gun Lake Tribe in Michigan. The project focuses on encouraging environmentally sound post-consumer materials management that will result in a decrease in the generation of municipal solid waste and/or an increase in the diversion of municipal solid waste from landfills and incineration. The project will provide access to anaerobic digestion and composting for tribes and tribal members of intertribal consortia for food waste management/diversion through the operation of a large-scale food waste digester. Implementation will reduce organic materials going to local landfills. The post-digester output of a compost/nutrient product will prevent additional effluent needing treatment. The project will also support the Tribe's significant efforts to advance the circular economy within Tribal operations and within southwest Michigan.

Length of the waiver: From the effective date of the final waiver until December 31, 2028.

Summary of Items Covered in the Proposed Waiver (including NAICS): The Gun Lake Tribe is seeking a waiver for an aerobic digester (NAICS code 332420). The aerobic digester is a BABA Manufactured product. The Gun Lake Tribe proposes to procure a non-domestic aerobic digester because no domestic alternative product was identified by the recipient, or through the EPA's market research completed in July 2024. The project specifies an aerobic digester with an automatic chain/hydraulic lifter, automatic bulk-hopper system (minimum 1,500 lb. storage), auger and food waste shredding device. The digester must have the capacity to operate a minimum of 2,000 lbs. of food waste per day. The aerobic food waste digester must have a compost/nutrient product after digestion.

Description of Efforts Made to Avoid the Need for a Waiver: Both the Gun Lake Tribe and the EPA made every effort to obtain a domestically produced aerobic digester. This is both documented in the Gun Lake Tribe's waiver request, and in the description of EPA's extensive research efforts listed below. EPA conducted market research that concluded on July 29, 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, personal communication with domestic manufacturers, and inquiries and review of existing waiver requests by EPA personnel. During market research, EPA contacted (8) manufacturers and suppliers for aerobic digesters. EPA's highly experienced technical contractors identified these manufacturers in their attempt to find all potential domestic manufacturers of the above-mentioned product. When contacted, (6) manufacturers for aerobic digesters responded, with (1) indicating they could supply a product that was BABA compliant. Prior to submission of the waiver request, the tribe communicated with this manufacturer and determined that the product in

question did not meet the required specifications. At EPA's request, the tribe contacted the manufacturer again and confirmed that the product had not changed and did not meet the tribe's specifications. The tribe's specification requires an aerobic digester that produces a compost/nutrient end-product.

Description of Award Recipient Name and/or Unique Entity Identifier (UEI): The Gun Lake Tribe – FEN3G1SWZ7B9

Federal Financial Assistance Identification Number (FAIN): 00E03641

Federal Financial Assistance Listing Name: Solid Waste Infrastructure for Recycling Grant

Federal Financial Assistance Listing Number: 66.92

Federal Financial Assistance Funding amount: \$1,084,454

Total Cost of Infrastructure Expenditures: \$480,780