

DEPARTMENT OF COMMERCE

Economic Development Administration Nonavailability Waiver for Dissolved Air Flotation Units for the City and Borough of Wrangell Water Treatment Plant Improvement Project

ACTION: Notice of Final Waiver

1. Summary

Agency: Department of Commerce (DOC)

Waiver: DOC's Economic Development Administration (EDA) is issuing a nonavailability 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 Dissolved Air Flotation (DAF) Units used in the Wrangell Water Treatment Plant Improvement Project in Alaska. DOC finds under IIJA 70914 and 2 CFR 184.7 that DAF units are not produced in the United States in sufficient and reasonably available quantities for the infrastructure project.

Applicability: This waiver action permits the use of non-domestic DAF Units in the Wrangell Water Treatment Plant Improvement Project in Alaska funded under an EDA federal assistance award.

Waiver type: Nonavailability of a BABA-compliant domestic product. The DAF Units do not fall under the current *Economic Development Administration Buy America Projects Planned Prior to the Implementation Date of Build America, Buy America on May 14, 2022, or Department of Commerce Department-wide Public Interest Waivers for De Minimis Infrastructure Project Purchases, Small Grants, and Minor Components within Iron and Steel Products* waivers.

Waiver level: Project-specific waiver for one award.

Summary of items covered in the waiver: Dissolved Air Flotation (DAF) Units (manufactured product)

Waiver justification summary: Despite the robust and wide public solicitation and direct outreach to all well-known industry DAF manufacturers, only one manufacturer bid on the solicitation, and that manufacturer is based outside the U.S.

Length of the waiver: This waiver is effective upon approval and will remain in effect until December 25, 2025, the estimated remainder of the project construction schedule.

2. 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.

Dissolved Air Flotation Units: The City and Borough of Wrangell, Alaska requested a nonavailability product specific waiver for three DAF Units. The DAF Units are central components to the renovation of Wrangell's water treatment plant. The DAF Units are a pre-packaged module using rapid mix, flocculation, dissolved air flotation, and dual media filtration to meet approximate 2.26 million gallon per day capacity.

In July of 2022, the City and Borough of Wrangell conducted a substantial effort to ensure the solicitation for the DAF Units was made available to as wide a range of qualified manufactures as possible. The following bullets detail the outreach effort:

- City and Borough of Wrangell website, under our Bids, RFPs, and Auctions section for competitive solicitation, from July 27th through the August 31st.
- Local newspaper, Wrangell Sentinel: August 3rd, 10th and 17th.
- Seattle Daily Journal of Commerce: July 29th, August 5th, 12th, and 19th.
- Alaska Journal of Commerce: July 31st, August 7th, August 14th, 21st, and 28th.
- The Plans Room, serving Alaska, on-line plans center.
- Contractor Plan Center, serving Washington and Oregon, on-line plans center.
- Builders Exchange of Washington, serving Washington, on-line plans center.

In addition, Wrangell leveraged the experience and knowledge of their niche DAF Unit designer, to reach out to manufacturers, including all well-known U.S. water treatment manufacturers of DAF treatment systems, with results bulleted below:

- One representative explained that the manufacturer had a significant workload and did not believe they could be competitive with marine grade aluminum as an allowable material for the DAF Units, thus electing not to participate in this project.
- Two manufacturers, or their representatives, were nonresponsive to direct outreach.
- One manufacturer offered to review the solicitation to see if they could meet all requirements. Despite extending the bid solicitation window no further response was received.
- Only one bid was received, from a non-domestic manufacturer.

Despite the robust solicitation and direct outreach to all well-known U.S. industry DAF manufacturers only one bid, non-U.S. based, was received. Both engineering firms involved in the project stated that it was not likely to receive any other interested vendors and the contract was awarded to the non-US firm.

The City and Borough of Wrangell requested this non-availability waiver because only one DAF Unit manufacturer bid on their solicitation despite robust efforts in advertising and direct outreach to all well-known industry manufacturers of DAF Units. DOC therefore issues a nonavailability waiver to allow the recipient to purchase the DAF Units from a non-compliant source, as this type of manufactured products is not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality needed for the infrastructure project.

3. Description of Award

Title of project: The Wrangell Water Treatment Plant Improvement Project

Infrastructure project description and location: The Wrangell Water Treatment Plant Improvement Project rehabilitates the existing facility and constructs a new water treatment process using a new treatment method called Dissolved Air Flotation (DAF) with Multi-Media Filtration. The DAF unit will increase the throughput of raw water to meet the current (and growing) water demand, improve the quality of drinking water to meet federal and state drinking water regulations, and reduce water waste. The EDA Investment Project includes the following: pre-packaged water treatment system equipment and the work necessary to construct and install this treatment system; survey, earthwork, and blasting; concrete and masonry work; new metal building; and generator.

Recipient Name: City and Borough of Wrangell

Unique Entry Identifier (UEI): EKXKZEKSQCN1

Federal Financial Assistance Program: Public Works and Economic Adjustment Assistance

Federal Financial Assistance Funding Amount: \$5,141,630

Total Infrastructure Project Amount: \$11,971,614

Estimated Cost of items being waived: \$3.1 million (three DAF Units)

4. Description of Covered Items

Manufactured product: The DAF Unit is a pre-packaged water treatment unit using rapid mix, flocculation, dissolved air flotation, and dual media filtration to meet approximate 2.26 million gallon per day capacity.

5. Waiver Justification Summary

Anticipated impact if no waiver is issued: The City and Borough of Wrangell has leveraged numerous grants and considerable loan funding to make this project constructable. The loss of EDA participation ~\$3.1M in previously approved construction costs could bring the project to a halt. The recipient has already leveraged considerable available loan funding and raised rates on water users and is not likely to have access to outside funds to fill this gap in EDA funding. If this project is terminated, the City and Borough of Wrangell safe water supply could be severely threatened. It has taken ~8 years from planning to construction award to get to this point in the project. The Build America, Buy America Act was not applicable to the grant at the time of solicitation and award of the initial contract. The original EDA grant for this project was awarded in 2019.

Description of efforts made to identify domestic products: In July of 2022, the City and Borough of Wrangell conducted a wide and robust public solicitation for the DAF Units. In addition, Wrangell leveraged the experience and knowledge of their niche DAF Unit designer to reach out to various U.S. water treatment manufacturers of DAF treatment systems.

Despite the robust solicitation and direct outreach to DAF manufacturers, the only bid received from these extensive efforts was from a non-U.S. manufacturer. The solicitation and direct outreach efforts illustrate that there was no known U.S. manufacturer willing to provide the DAF Units.

6. 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.

7. Solicitation for Comments

On April 2, 2024, DOC published its proposed nonavailability waiver for dissolved air flotation units for the City and Borough of Wrangell water treatment plant improvement project for a 15-day public comment period on the Department’s Build America, Buy America [website](#). DOC received no comments during the public comment period. Therefore, DOC is issuing the waiver with no changes from the version that was published for public comment.

For more information on the Build America, Buy America preference, please reference DOC’s Build America, Buy America [website](#) or [MadeinAmerica.gov](https://www.madeinamerica.gov).

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