



May 20, 2022

Alejandro Escobar
Chief, Technical Support Branch
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Proposed Waiver for Build America, Buy America for the Water Infrastructure Financing and Innovation Act (WIFIA)

Dear Mr. Escobar,

The Council of Infrastructure Financing Authorities (CIFA), which represents the Clean Water and Drinking Water State Revolving Funds (SRFs), fully endorses a waiver of the requirements of the Build America, Buy America Act (BABAA) in the Infrastructure Investment and Jobs Act (IIJA) for all federally funded and financed projects that have initiated design planning prior to the effective date of the law, May 14, 2022. Further, CIFA fully endorses a waiver to establish an “adjustment period” for implementation of these requirements and a waiver of requirements for projects that initiate design planning during the “adjustment period.”

Clean water is a priority for the American people. Construction, rehabilitation, and improvement of water, wastewater, recycled water, and stormwater facilities are essential to preventing harmful water pollution, restoring and protecting water quality, and providing safe, reliable drinking water. Federal funding and financing, as well as strategies to manage the rising cost of compliance and infrastructure, are critical to ensuring affordable access to these vital, life-sustaining services, especially for disadvantaged communities and vulnerable populations.

Exempting water projects that have initiated design planning or construction from new procurement requirements will ensure projects remain on time and on budget, which is clearly in the public interest. Implementing new rules on projects that have already begun design planning and construction will likely stop or delay construction and increase costs, which could potentially cause service disruptions of these critical public health and environmental protection facilities.

Providing more clarity on the initiation of project design planning may be helpful. In the waiver, “initiated project design planning” is defined as “efforts made by the utility owner to evaluate and identify both technologically and financially viable options for capital improvement projects.

These efforts can be in various forms of technical documents describing design concepts, alternatives analyses, and long-term facility or system plans. Examples include preliminary engineering reports, master plans, basis of design reports, and technical design memorandum.” However, the examples of documentation more accurately reflect “completion” of design planning, rather than “initiation” of design planning. Instead, “initiation” of design planning should include efforts to procure design planning services, such as the date of a bid or execution of a contract for design planning services.

Additionally, CIFA urges establishment of waivers to establish an adjustment period for implementation of these rules and requirements, as suggested by the Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure issued by The White House Office of Management and Budget Made in America Office on April 18, 2022. Providing an adjustment period for implementation of new rules and requirements will ensure critical water infrastructure projects currently in the pipeline can proceed as planned and without delay.

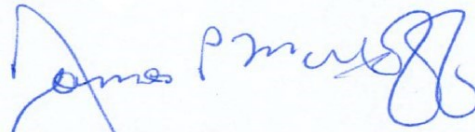
The adjustment period for manufactured projects, which can be comprised of thousands of individual components, may need to be longer to allow for development of a comprehensive strategy for vetting complex products. A longer adjustment period will provide adequate time for the water and manufacturing communities to fully evaluate the availability of best available technologies to meet stringent water quality standards that protect public health and the environment. A longer adjustment period for manufactured products is likely have the additional benefit of reducing the number of waiver requests for individual projects once the new rules and requirements take effect.

Moreover, CIFA urges extension of the proposed waiver to projects that initiate design planning through the adjustment period. Current uncertainty over the rules and requirements is delaying decisions on water infrastructure investment and commencement of financing agreements. Without an extension of the waiver for requirements through the adjustment period, many projects are likely to delay design planning until the final rules are established.

Finally, CIFA urges consideration of the impact of implementation on water utilities, particularly those that serve low-income households and vulnerable populations. Every federal requirement on government funding and financing increases the cost of construction, administration and compliance of water infrastructure projects, which consequently erodes the savings offered by subsidized government loans. Consequently, well-intended public policy can have the unintended consequence of undermining efforts to maintain affordability of life-sustaining water services, disproportionately impacting low-income households. Burdensome paperwork and processes can also have a deterrent effect on use of subsidized loan programs, particularly for utilities and water systems that don't have the professional capacity to manage projects in-house.

Thank you for the opportunity to comment on this proposed waiver. CIFA looks forward to working with the Biden-Harris Administration to implement Build America Buy America to strengthen our nation's commitment to clean water.

Sincerely,



James P McGoff
COO and Director of Environmental Programs
Indiana Finance Authority
CIFA President

About CIFA

CIFA is a national not-for-profit organization that represents the Clean Water and Drinking Water State Revolving Funds (SRFs), the nation's premier programs for funding water infrastructure that protects public health and the environment.

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