

# Build America, Buy America (BABA)

Lessons Learned in Design, Bidding Requirements and Construction Applications

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2025 Surface Water Treatment Workshop





# Outline

- Waiver Decision Making Process
- Equipment/Products – Limited or Not Available
- BABA Waivers
- Non-Availability Waiver Process
- De Minimis
- Things to Consider When Bidding
- Things to Consider During Construction

# Waiver Decision Making Process



**Review Federal  
Agency  
Requirements  
for BABA**



**Determine  
What  
Equipment/  
Products  
Can't Meet  
BABA**



**Review Costs  
of Equipment/  
Products**



**Determine  
appropriate  
BABA Waiver,  
if applicable**



# Equipment/Products – Limited or Not Available



- Motor Control Centers
- Variable Frequency Drives
- Enclosed Switches
- Panelboards
- Transformers
- Lighting Fixtures
- Generator Receptacles
- Electrical Boxes
- Fuses
- Uninterruptible Power Supply
- Split-System Air Conditioners
- Aluminum
- Pumps
- Valve Actuators
- Greensand Plus
- Filter Underdrains

**Re-think approved manufacturers -**  
preferred manufacturers may not be available

# Build America, Buy America (BABA) Waivers



- Public Interest Waiver
- Unreasonable Cost Waiver
- Nonavailability Waiver
- De Minimis

# Nonavailability Waiver



- Informal Market Research
- Review info and determine if Equipment/Products found meet your requirements
- Draft Nonavailability Waiver Request

# Nonavailability Waiver Request



**Project Summary**



**Project Description**



**Summary of Due Dilligence**



**Quantity and Materials of Products**



**Engineering Specifications and Project Design Considerations**



**Unit Cost of Materials**



**Schedule of Products**



**Additional Pertinent Information**

# De Minimis Process

## AIS De Minimis Requirements

- Incidental products
- 5% of total materials cost for the project
- Any single item cannot be more than 1% of total materials cost of the project

## Thoughts

- Process streamlined
- More favorable - 5% total project cost

## BABA De Minimis Requirements

- 5% of total project cost
- Approved submittal



# Bidding Considerations



- Contractors, suppliers, and manufacturers knowledge about BABA
- Review approved equals for BABA
- Bid Language required by State Agencies

# Construction Considerations



Certification Letters – Require more tracking.



Provide schedule for potential De Minimis equipment and product



Longer lead times on equipment and products

# MSRWD Phase 3 WTP Improvements - Case Study

- Bid **June 2023** with AIS Requirements.  
*Combined bid approximately \$7.7M.*
- Repackaged Project with different funding sources.
- **November 2023** - Non-applicability waiver no longer available for 2024 funds from EPA.
- **January 2024** - Confirmation of new funding source and the need to meet BABA Requirements.
- **February 2024** - Review affect of BABA Requirements on products and equipment.
  - Cost of equipment not meeting BABA was approximately 4% of total project cost.
  - Determined that project should apply for a Project Specific Nonavailability Waiver.
- **March 2024** - Worked through NDDEQ to have EPA conduct informal market research. *(3 weeks)*
- **April 2024** - Drafted and submitted the first Project Specific Nonavailability Waiver request in the country through NDDEQ to EPA. *(approximately 50 hours from February - April)*
- **July 2024** - Re-bid project with BABA requirements and anticipating acceptance of Nonavailability Waiver. *Combined Bid approximately \$6.5M.*
- **August 2024** - Approval of Project Specific Nonavailability Waiver. *(approximately 4 months)*

# Thank you! Questions?



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