



August 15, 2022

Mr. Dan Coogan
Office of Resources and Business Operations
Office of Mission Support
U.S. Environmental Protection Agency

Via email

Re: Comments on EPA’s proposed Build America, Buy America waiver for *de minimis* items

Dear Mr. Coogan:

The Association of Metropolitan Water Agencies (AMWA) appreciates the opportunity to comment on EPA’s proposed public interest waiver of the requirements of section 70914(a) of the Infrastructure Investment and Jobs Act of 2021 (IIJA) for project purchases below a *de minimis* threshold to reduce the administrative burden for recipients and agencies. While AMWA appreciates and supports EPA’s willingness to waive the new Build America, Buy America rules for low-cost project materials, the association requests further information in how the agency plans to implement this waiver. Additionally, due to the broad range of program award amounts, AMWA believes a dollar cap would unnecessarily hurt larger funded projects that require a considerable amount of *de minimis* items.

AMWA supported passage of IIJA and is pleased with the historic investment it contains to enable communities to replace lead service lines and address emerging drinking water contaminants. Water utilities will rely on these funds to complete important projects pivotal to providing safe, clean drinking water to the public. By waiving Build America, Buy America requirements for *de minimis* items, EPA will allow reduce the administrative burden on recipients and allows projects to make efficient use of limited resources. AMWA recommends that there be a streamlined and simple process for projects to apply for a waiver if *de minimis* items exceed 5% of the total project. This arbitrary percentage threshold should not prevent projects with large purchases of *de minimis* items from benefitting from a waiver of Build America, Buy America requirements.

Although generally supportive of waivers, AMWA asks for further clarification on how EPA will implement this waiver. Specifically, will projects automatically receive a waiver for up to

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5% of total costs, or will they need to submit paperwork detailing the projects *de minimis* items and associated cost? AMWA recommends the former to streamline the process and reduce burdens both on EPA and the recipients. In addition, AMWA assumes this new waiver does not negate the waiver already in effect for iron and steel.

Finally, AMWA agrees with EPA's decision to refrain from including a dollar cap for the waiver. Projects vary immensely in award amounts and the effect of a dollar cap would negate the intent of the *de minimis* waiver. For example, the Drinking Water State Revolving Fund (DWSRF) in fiscal year 2019 awarded funds that range from \$875 to \$158,000,000.¹ It would not be in the public interest to provide a 5% waiver for the \$875 project, but not for the \$158 million project, as both could have proportional *de minimis* item costs.

Thank you for the opportunity to comment on this matter. AMWA looks forward to continuing to work with EPA to promote cost-effective water infrastructure investment.

Sincerely,



Thomas Dobbins
Chief Executive Officer

cc: Radhika Fox, OW
Jennifer McLain, OGWDW
Lynnann Hitchens, OMS

¹ <https://www.epa.gov/system/files/documents/2022-04/2019-annual-report-final-508compliant.pdf>