

October 15, 2024

**Build America Buy America Act Proposed Nonavailability Waiver  
McKenzie Memorial Hospital  
Replacement Hospital  
Solid Vinyl Tile Flooring**

**1. Summary**

Agency: United States Department of Agriculture (USDA)

Waiver: The United States Department of Agriculture is proposing a nonavailability waiver of the manufactured product 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 solid vinyl sheet flooring for use at the hospital project in Sandusky, MI.

Applicability: This proposed waiver action permits the use of non-domestic solid vinyl tile flooring in the Replacement Hospital Project. This product will be obtained by McKenzie Memorial Hospital and incorporated into the subject project, prior to the expiration date of the waiver.

Waiver Type: Nonavailability waiver of the BABA manufactured product requirements for solid vinyl flooring.

Summary of Items Covered in Waiver: solid vinyl tile flooring

Waiver Justification Summary: Solid vinyl tile flooring are manufactured products not produced in the United States of a satisfactory quality or specifications for use in the identified project.

Length of the Waiver: This waiver will be in effect upon approval and will remain in effect until March 31, 2026, the estimated remainder of the project's 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.

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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), The Agency 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.

#### Solid Vinyl Tile Flooring

McKenzie Memorial Hospital is requesting a product-specific waiver for the solid vinyl tile flooring, with no approved equals. This product is necessary to ensure that there is homogeneous, solid vinyl, polyurethane reinforced, no wax, 2.0mm tile floor, with a low luster finish maintained through a spray buff/dry buff maintenance program. This product also meets the required technical specifications of complying with the ASTM F1913, ASTM F970, ASTM F925, and CAN/ULC S102, which means that the product allows for no finish dressing, adequate PSI and static load recovery, resists chemicals present in healthcare facilities, and meets fire code. McKenzie Memorial Hospital is requesting a nonavailability waiver due to the project design being specific to this solid vinyl tile flooring. The project design began in 2022, before BABAA requirements. Additionally, McKenzie Memorial Hospital's goal is to ensure resiliency as quickly as possible and any delays, such as those previously noted, would most likely result in missing major milestones for the project.

### **3. Description of Award**

Title of Project: McKenzie Memorial Hospital Replacement Hospital

Infrastructure Project Description and Location: The McKenzie Memorial Hospital Replacement Hospital is the construction of a new medical facility to increase the efficiency and quality of services provided by McKenzie Memorial Hospital. This project is being constructed in Sandusky, Michigan. The proposed project is to construct a 68,000 square foot hospital.

Description of Project: The McKenzie Memorial Hospital Replacement Hospital is an all-new construction on a new site already owned by the hospital. The Replacement Hospital will allow McKenzie Memorial Hospital to meet industry standards across several facets including surgery department and emergency department.

Recipient Name: McKenzie Memorial Hospital

Unique Entry Identifier (UEI): EBRFKNLDCLQ4

Federal Financial Assistance Program: Community Facilities Direct Loans & Grants

Federal Financial Assistance Funding Amount: \$69,051,000

#### **4. Description of Covered Items**

Manufactured Products: The waiver seeks an exception to the Buy America requirements for the following manufactured products:

Solid Vinyl Tile Flooring

- NAICS: 238330 Resilient floor tile or sheet, installation only
- NAICS: 326199 Resilient Floor Covering Manufacturing
- PSC: 7220 Floor Covering
- Cost: \$84,500.00

#### **5. Waiver Justification Summary**

Anticipated Impact if No Waiver is Issued: The solid vinyl tile flooring referenced above is an essential product that is required for the completion of the project. This product is not manufactured within the United States in sufficient quality. Although BABAA-compliant products were identified, none met the required specifications of the product. This project does not have any approved equals for the solid vinyl tile flooring. If a waiver is not approved, this project will not provide utmost quality and continuity of care to its patients.

Description of Efforts Made to Identify Domestic Products: USDA conducted market research to determine if there are domestic manufacturers that can produce or supply solid vinyl tile flooring. USDA contacted multiple manufacturers for product availability. Most manufacturers contacted either confirmed they cannot manufacture these products to meet the project specifications, did not respond to inquiries, or their products are not BABAA-compliant. Thus, they are not a viable option for this project, given that the project has no approved equals for this product.

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. USDA’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.

Solicitation for Comments: The proposed waiver will be posted on USDA’s public facing webpage and a notice of the proposed waiver will also be posted to the Made in America website, to satisfy the requirement to publish any Build America, Buy America Act Project Waiver and provide the public with fifteen (15) days to submit comments. USDA is seeking public and industry comments from all interested parties and encouraging current manufacturers of the subject products to submit comments regarding potential availability.

For more information on the Build America, Buy America Preference, please reference <https://www.rd.usda.gov/build-america-buy-america>