



Rural Development

Rural Utilities Service

Water & Environmental Programs

1400 Independence Ave SW
Washington, DC 20250

DECISION MEMORANDUM

DATE: May 26, 2023

SUBJECT: Availability-Based Project Waiver of American Iron and Steel Requirements for four-inch reduced pressure zone backflow prevention valve assemblies for the City of Elizabeth’s Water Treatment Plant Improvements Project in Otter Tail County, MN

Waiver Number: 23-002

FROM: Steven Polacek
Acting Assistant Administrator
Water and Environmental Programs

Decision: The U.S. Department of Agriculture (USDA) is hereby granting an availability-based project-specific waiver of American Iron and Steel (AIS) requirements to the City of Elizabeth Water Treatment Plant Improvements Project for the purchase of one (1x) four-inch reduced pressure zone backflow prevention valve assembly in Otter Tail County, MN. This waiver permits the use of non-domestic RPZ backflow prevention valve assemblies because no known domestic manufacturers can deliver a product that meets the project’s technical specifications.

This is a project-specific waiver which applies only to the use of the specified product for the referenced project funded by the USDA Rural Development (RD) Rural Utilities Service (RUS) Water and Waste Disposal (WWD) Loan and Grant program under the Water and Environmental Programs (WEP). Any other project that wishes to use the same product must submit a separate waiver request based on the specific project circumstances.

Rationale: The AIS provision of the Consolidated Appropriations Act of 2017 (Public Law 115-31) and subsequent statutes require WEP assistance recipients to use domestic iron and steel products unless RD determines that it is necessary to waive this requirement. USDA has the authority to issue waivers in accordance with section 746 (b)(2) of P.L.115-31, which states in part: “[the requirements] shall not apply in any case or category of cases in which the Secretary of Agriculture ... or the designee of the Secretary finds that ...iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.” As per the delegation memo of July 2017, approval of project specific waivers has been delegated to the Engineering and Environmental Staff Director.

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Background of Waiver Request: The City of Elizabeth's Water Treatment Plant Improvements Project in Otter Tail County, MN, includes installation of reduced pressure zone backflow prevention valve assemblies in their water system. The contractor stated that they could not find a manufacturer to furnish an assembly that adhered to AIS requirements, and furnished letters from four suppliers corroborating this.

USDA RD had earlier been made aware of the lack of AIS-compliant backflow preventers regarding projects in Edgar, NE and Bartholomew, IN. In both cases, the applicants reached out to multiple manufacturers or distributors, who all stated that they cannot supply backflow preventers meeting domestic preference requirements. USDA's AIS contractor then contacted twelve manufacturers and suppliers, including those contacted by the applicants. Of the companies that responded, none of them manufacture backflow preventer assemblies meeting both the project specifications and domestic preference requirements. Based on this research, USDA granted the Edgar, NE, project and the Bartholomew County, IN, project a waiver of AIS for the backflow preventers on April 14, 2022 (# 22-004) and August 23, 2022 (22-007).

The City of Elizabeth submitted to RD a formal request to waive AIS requirements for the assemblies on April 24, 2023. Per statutory requirement, the waiver request was posted on RD's AIS website for a 15-day public comment period, and the Agency received no comments.

Finding: USDA is granting an availability-based waiver from the AIS requirements to the City of Elizabeth, MN for one (1x) four-inch reduced pressure zone backflow prevention valve assembly. This waiver permits the purchase of these assemblies using WEP funds for the City of Elizabeth's Water Treatment Plant Improvements project as documented in the city's waiver request submittal.

Legal Authority: Legal authority for the AIS requirements for WEP projects is included under the Consolidated Appropriations Act of 2017 and subsequent statutes, under the authority of section 746 (b)(2) of P.L.115-31.

If you have questions concerning the contents of this memorandum, please contact WEP Engineering at WEPEngineering@usda.gov.