



# WATERREUSE®

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March 13, 2023

The Honorable Shalanda Young

Director

Office of Management and Budget

725 17th Street, N.W.

Washington, D.C. 20503

Dear Director Young:

On behalf of the WateReuse Association (WateReuse), I am pleased to submit our comments regarding the U.S. Office of Management and Budget's (OMB) proposed guidance revising Guidance for Grants and Agreements related to the *Build America, Buy America Act* (BABA) provisions.

The WateReuse Association is a not-for-profit trade association for water utilities, businesses, non-profit organizations, and research entities that advocate for policies and programs to advance water recycling. WateReuse and its state and regional sections represent nearly 250 water utilities serving over 60 million customers, and over 200 businesses and organizations across the country.

WateReuse and our members were deeply involved in the development and enactment of the Infrastructure Investment and Jobs Act (IIJA). We worked closely with Congress to ensure that the legislation supports water recycling as a resiliency tool. As the only national organization solely dedicated to advancing water reuse, we highlight the following concerns regarding the proposed guidance.

As currently written, the proposed guidance fails to clarify which entities are responsible for certifying compliance and what the process is for calculating the overall cost of components. To support efficient and effective compliance, OMB should clarify these processes and definitions so that regulated entities understand the full set of requirements under the law.

The WateReuse Association therefore urges OMB to adopt the following recommendations to ensure that the final guidance can be effectively implemented.

Recommendation #1: WateReuse recommends that OMB revise the guidance to clarify what constitutes and how to calculate the total cost of components. The guidance should include documentation requirements and examples.

Water infrastructure funding is essential for water utilities to provide quality, uninterrupted water, wastewater, and recycled water services to communities across the U.S.. Water recycling facilities employ certain specialized equipment and advanced water treatment technologies to safely and reliably treat recycled water to meet rigorous standards. The development of essential water infrastructure projects involves collaboration between the water utility, often the funding assistance recipient, design engineer, contractor, and manufacturer of the equipment and products used. For water infrastructure projects to ensure compliance, it is essential for there to be clear guidance on how to calculate the total cost of components.

As written, the proposed guidance's amended definitions fail to clarify how to calculate whether the cost of components that are mined, produced, or manufactured in the U.S. is greater than 55% of the total cost of all components. For example, the proposed guidance's definition for "cost of components" includes acquisition cost, transportation cost, and allocable overhead costs, but it fails to provide details on additional variables that must be included or an equation for calculating the total cost. Notably, the definition fails to mention how labor costs should be evaluated. To ensure that BABA requirements support the creation of U.S. jobs and manufacturing, it is essential to include the domestic labor costs on manufactured items when calculating the total cost of components. To neglect domestic labor costs would undermine the congressional intent in enacting the BABA requirements.

WateReuse urges OMB to revise the guidance to clarify the following issues:

1. How should the total cost of components be calculated?
  - a. What inputs are included and excluded in the calculation? How are excluded materials defined?
  - b. At what level for an end-product, infrastructure project or product level, is the cost of components calculated?
2. For the initial capital project, would repairs, components/parts, service parts or consumable chemicals also be considered a manufactured product under the IJA when the initial capital project is? When sold separately, would these also need to be sourced domestically?
3. What is the required documentation to prove a manufactured product is made in America? How far back into the supply chain does this reach?
4. Assembling costs - Does domestic labor count towards the 50-55% domestic cost or only components?
5. Is the percentage of domestic materials expected to progressively increase (e.g., 55% now, 65%, 75% later)?
6. What is the required documentation to demonstrate compliance for an entire project?

Recommendation #2: WateReuse requests OMB clarify which entities are responsible for demonstrating and certifying that BABA standards and requirements are being met.

As discussed, water recycling infrastructure projects often involve multiple parties including utilities, design engineers, contractors, and manufacturers of the equipment, products and



materials used. The proposed guidance fails to clarify who is the responsible entity for certifying compliance when sourcing components and calculating the cost of components. OMB has proposed definitions utilizing the language in the Federal Acquisition Regulation, which have not previously been designed to apply to water infrastructure projects. Therefore, OMB needs to provide clarifying language on the entities responsible for demonstrating and certifying that BABA standards and requirements are being met.

For example, the proposed guidance utilizes “contractor” as the subject purchasing or manufacturing components. For recipients of water infrastructure funding, such as water utilities, working to comply with the BABA requirements, it is not clear who a “contractor” would refer to. Would this be the manufacturer of the component or product, the utility purchasing the component or product, or the hired construction contractor? Typically, in public works contracting, the contractor awarded the project procures the equipment and materials needed for the project. However, it is not clear that this is the entity to which the term “contractor” is meant to apply.

Furthermore, the EPA’s Office of Water, which administers two of the largest federally funded water infrastructure funding programs, released guidance in November 2022 that does not refer to the entity responsible for confirming compliance as a “contractor.” The EPA’s Office of Water memo requests funding recipients obtain signed certification letters from product manufacturers; however, the manufacturers are responsible for ensuring the product sold complies with BABA manufacturing requirements.

As a water utility funding recipient considers the proposed OMB guidance alongside the EPA’s implementation memo, it is unclear who is responsible for calculating the total cost of components for products and at what level.

Recommendation #3: WaterReuse urges OMB to continue the interagency dialogue that includes sector stakeholders through listening sessions, information meetings, and more.

As discussed under recommendation #1, water reuse and recycling facilities employ certain specialized equipment and advanced water treatment technologies to safely and reliably treat recycled water to meet rigorous standards. This specialized equipment is often unable to be sourced in the United States, and it is essential to engage with the water reuse and recycling community to understand the challenges associated with procurement of these specialized items. After conducting outreach to our members, we identified the following essential advanced water treatment technologies and manufactured goods that typically incorporate products sourced outside the United States:

- Membranes and membrane bioreactors
- Ultra-violet treatment
- Valves and appurtenances
- Pumps
- Motors



- Reverse osmosis system equipment and piping
- Ozone treatment
- Granular Activated Carbon
- PVC sheeting used in construction of wastewater treatment facilities

We thank OMB for the continued engagement with the water stakeholder community and urge OMB to evaluate and consider potential adverse consequences of the proposed guidance moving forward without clarifications, including implications for water recycling projects.

WaterReuse looks forward to working with you and your team to implement these programs and to bring about the implementation of many new climate-resilient projects across the United States.

Sincerely,



Patricia Sinicropi, J.D.  
Executive Director

