



## **DEPARTMENT OF TRANSPORTATION**

### **Maritime Administration**

#### **Notice of Final Nonavailability Waiver of Buy American Act Requirements: Port of Corpus Christi Authority to Purchase Marine Loading Arms**

**AGENCY:** Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** MARAD is issuing a limited waiver of the Buy American Act requirements for non-domestic marine loading arms for the Port of Corpus Christi Authority's (PCCA) Avery Point Public Oil Docks Redevelopment—Phase 1: Expanding Oil Dock 3 project, which received funding under the FY 2019 Port Infrastructure Development Program (PIDP). The Buy American Act requires that manufactured articles, materials, or supplies be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States. The final waiver applies only to the procurement of eight non-domestic 8-inch diameter manually operated marine loading arms based on nonavailability.

**DATES:** This waiver is effective on [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Wade Morefield, Transportation Industry Analyst, Office of Port Infrastructure Development, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, email: [Wade.Morefield@dot.gov](mailto:Wade.Morefield@dot.gov), telephone: (202) 366-6025. For legal questions, please contact Colleen Smith, Attorney-Advisor, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, email: [Colleen.Smith@dot.gov](mailto:Colleen.Smith@dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access and Filing**

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: [www.federalregister.gov](http://www.federalregister.gov). The web site is available 24 hours each day, 365 days each year.

### **Project History and Background**

On June 18, 2019, MARAD published a Notice of Funding Opportunity (84 Fed. Reg. 28386) announcing application requirements and establishing selection criteria to obtain grant funding under the FY 2019 PIDP. The FY 2019 round of PIDP provided Federal funding to make grants to improve port facilities at coastal seaports.

On February 5, 2020, MARAD selected PCCA to receive a FY 2019 PIDP grant in the amount of \$17,600,000 for its Avery Point Public Oil Docks Redevelopment—Phase 1: Expanding Oil Dock 3 project. The project will double the capacity at Dock 3 at Avery Point, enabling PCCA to meet growing demand for berth space to support exports of refined petroleum products. The project includes refurbishment of the existing docks and construction of a second dock and related infrastructure to expand capacity by accommodating barges discharging and loading cargo.

The project includes the installation of new marine loading arms. Marine loading arms are comprised of a riser, baseplate, an inboard arm pivotally mounted to the riser, an outboard arm pivotally mounted to the inboard arm, and a triple swivel connection pivotally mounted to the outboard arm. They are used to connect a tankship or barge to a cargo terminal to load and unload liquid or gaseous products from barges and tankers safely and efficiently.

PCCA submitted a Buy American Act waiver request to MARAD on January 23, 2024, after completing a public search for domestic marine loading arms. On August 10, 2023, PCCA released a request for Competitive Sealed Proposals (CSP) for Dock 3 design, fabrication, and delivery of marine loading arms. PCCA received three proposals in response to the CSP request. All responders were advised of the Buy American Act requirements and were asked follow-up

questions. None of the responders indicated that they could provide a fully Buy American-compliant marine loading arm.

In its request for a waiver, based on the results of the CSP, PCCA concluded that it believes a waiver is justified because there are no domestically manufactured marine loading arms that comply with the Buy American Act requirements. In the absence of a waiver, the project could not be delivered as intended since there are no domestic manufacturers of marine loading arms that can make a Buy American Act-compliant product.

On January 7, 2025, after reviewing PCCA's request and conducting its own due diligence, MARAD published a proposed waiver for the project based on nonavailability of marine loading arms for a 15-day public comment period on its "Made in America" webpage.<sup>1</sup> The proposed waiver was cross-posted to the DOT's "Made in America" webpage<sup>2</sup> and the Made in America Office (MIAO) website.<sup>3</sup> This notice summarizes MARAD's domestic content requirements and policy, PCCA's request for a waiver, and MARAD's findings and final waiver.

### **MARAD's Domestic Content Requirements and Policy**

MARAD does not have its own program-specific Buy America statutory authority that applies to PIDP grants. Instead, consistent with the congressional directive in the Consolidated Appropriations Act, 2019,<sup>4</sup> MARAD applied the domestic content requirements of the Buy American Act, 41 U.S.C. chapter 83, to grants awarded under the FY 2019 PIDP. As a result, FY 2019 PIDP recipients must purchase domestic products and materials when using those appropriated Federal dollars.

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<sup>1</sup> <https://www.maritime.dot.gov/grants-finances/made-america>

<sup>2</sup> <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>

<sup>3</sup> <https://www.madeinamerica.gov/waivers/>

<sup>4</sup> See the Consolidated Appropriations Act, 2019 (Pub. L. 116-6, div. G, tit. IV, § 410 (Feb. 15, 2019)): "No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 8301-8305, popularly known as the 'Buy American Act')." Although the Buy American Act normally governs acquisitions made directly by the Federal government, through this provision, Congress extended the requirements of the Buy American Act to recipients of Federal assistance using appropriated funds under DOT programs.

MARAD implemented the Buy American Act requirements by contract in each FY 2019 PIDP grant agreement executed. In PCCA's agreement (executed on March 30, 2022), these requirements were included in section 18.2 of the general terms and conditions of the grant.<sup>5</sup> MARAD considers FY 2019 PIDP projects as public works of the Federal Government under 41 U.S.C. 8301.<sup>6</sup>

The Buy American Act requires that manufactured articles, materials, or supplies be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States. Pursuant to 41 U.S.C. chapter 83, manufactured articles, materials, and supplies of iron and steel are deemed manufactured in the United States only if all manufacturing processes involved in the production of such iron and steel, from the initial melting stage through the application of coatings, occur in the United States. See 41 U.S.C. 8303.

MARAD strictly enforces compliance with its domestic content requirements to ensure that MARAD-funded projects maximize the use of materials produced in the United States. MARAD expects grantees to work with suppliers to conduct thorough market research and adequately consider, where appropriate, qualifying alternate items, products, or materials. Compliance with MARAD's domestic content requirements supports industry and well-paying jobs.

### **MARAD's Authority to Waive Domestic Content Requirements**

There are limited circumstances in which MARAD can waive the domestic content requirements applied to its financial assistance programs. MARAD will grant a waiver request

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<sup>5</sup> See [https://www.maritime.dot.gov/sites/marad.dot.gov/files/2021-06/FINAL.FY2019%20PIDP%20Grant%20Agreement%20template%20general%20terms%20and%20conditions.rev\\_6.23.21.docx.pdf](https://www.maritime.dot.gov/sites/marad.dot.gov/files/2021-06/FINAL.FY2019%20PIDP%20Grant%20Agreement%20template%20general%20terms%20and%20conditions.rev_6.23.21.docx.pdf).

<sup>6</sup> Infrastructure projects funded under PIDP in more recent years are subject to the domestic preference requirements of the Build America, Buy America Act (BABA) (Pub. L. 117-58, § 70901(a) (Nov. 15, 2021)). However, as the grant agreement for the PCCA project was executed prior to the May 14, 2022, effective date of BABA, only the Buy American Act requirements apply.

that is consistent with the statutory criteria for a waiver and where a grantee has adequately justified the need for a waiver.

Under 41 U.S.C. 8303, MARAD may consider a waiver of the Buy American Act requirements if MARAD determines that applying the requirements: (1) would be impracticable or inconsistent with the public interest; (2) the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or (3) the cost of the item is unreasonable.<sup>7</sup>

Specifically, when determining whether the articles, materials, or supplies are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality pursuant to 41 U.S.C. 8303, MARAD considers whether the recipient has used appropriate due diligence, such as market research or by soliciting proposals through an open procurement process, to identify domestic products or domestically available alternative products that meet the recipient's specifications. A comparable product that performs a similar function is not necessarily a domestic alternative; the product must also meet the recipient's specific requirements. The Buy American Act requirements do not require recipients to change product specifications in order to utilize domestic products that do not meet the recipient's original specifications. If there are no domestically produced products that also meet the recipient's specifications, and the recipient has exercised appropriate diligence, MARAD may waive the Buy American Act requirements based on nonavailability, consistent with 41 U.S.C. 8303.

If MARAD determines a waiver is appropriate, MARAD will provide notice and seek comment from the public. Unless otherwise specified, waiver decisions are non-precedential and are only applicable to the entities and components for the specific project identified in the final decision.

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<sup>7</sup> Per the terms of PCCA's grant, the cost of a domestic construction material is considered unreasonable if the cost of that material exceeds the cost of comparable foreign material by more than 6 percent. This percentage was based on the similar percentage outlined in the Buy American Act implementing regulations (48 CFR Part 25) in effect at the time PCCA's grant was executed.

## **Summary of the Proposed Waiver**

On January 7, 2025, MARAD issued the Notice of Proposed Nonavailability Waiver of Buy American Act requirements: Port of Corpus Christi Authority to Purchase Marine Loading Arms on MARAD's website and the MIAO website. Based on its review of the waiver request and PCCA's efforts in sourcing a domestic item, MARAD determined that the marine loading arms that meet PCCA's technical specifications are not produced in the United States in a sufficient and reasonably available amount or satisfactory quality, consistent with 41 U.S.C. 8303, nor are there domestically produced options that would meet the standard.

## **Discussion of Public Comments**

MARAD did not receive any comments on the January 7, 2025 notice and thus is finalizing the waiver as proposed.

## **Final Waiver**

Based on its review of the waiver request, MARAD is waiving the Buy American Act for the following items to be purchased under the Avery Point Public Oil Docks Redevelopment—Phase 1: Expanding Oil Dock 3 project:

- 8-inch diameter manually operated marine loading arms.

The waiver will apply only to the items listed above for use in PCCA's project, as described in the grant agreement between MARAD and PCCA. The waiver will not apply to other MARAD grantees or to other grants that might be made to PCCA for other projects (including future phases related to the FY 2019 PIDP project). The waiver is effective from the date of the final waiver through the period of performance and closeout of MARAD's financial assistance for the project, which is estimated to be August 31, 2030.

By order of the Maritime Administration.

**T. Mitchell Hudson, Jr.,**  
*Secretary, Maritime Administration.*