



Aug. 5, 2024

**Build America Buy America Act Approved Public Interest Waiver:
Long Term Sustainability for City of Provo, Utah Water Supply,
2021 BRIC Grant Project**

1. Summary

Agency: Federal Emergency Management Agency (FEMA)

Waiver: FEMA is issuing a public interest-previously planned project waiver of the requirements of section 70914 of the Build America, Buy America Act (BABAA) included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) for the Long Term Sustainability for Provo's Water Supply: 2021 Building Resilience Infrastructure and Communities (BRIC) Grant Project. This waiver is to be in effect through December 14, 2026, the estimated completion of the project.

Applicability: This waiver action permits the use of non-domestic iron, steel, construction materials and manufactured products in the Long Term Sustainability for Provo's Water Supply Project: 2021 BRIC Grant Project, with the exception of iron pipes and non-stainless steel pipes. Iron pipes and non-stainless-steel pipes are expected to comply with the BABAA requirements. These products will be obtained by the City of Provo and incorporated into the subject project.

Waiver Type: Public interest waiver of the BABAA requirement for a previously planned project.

Waiver Level: Project-specific waiver.

Waiver Justification Summary: The City of Provo requested a waiver of the BABAA requirement for its Long Term Sustainability for Provo's Water Supply: 2021 BRIC Grant Project. The City of Provo first applied for FEMA BRIC funding based on a 2021 BRIC Notice of Funding Opportunity (NOFO). As this was prior to BABAA being signed into law, the NOFO did not include any notice of the BABAA requirements. Significant planning and design occurred prior to May 14, 2022, the implementation date of the BABAA requirement. Full BABAA compliance for this project would impose an undue cost burden on the community, cause significant project delays, and jeopardize the ability to use time-sensitive funds. Increased financial costs are in addition to the risks and costs of delay in mitigation of drought risk to the aquifer and risk to the public due to unmet water demand.

Absent a public interest waiver issued by FEMA, the City of Provo would be required to revise the entire project timeline to incorporate BABAA requirements and address the increased cost of construction due to delay and the potential need for rebidding. The City of Provo would also run the serious risk of losing access to other time-sensitive funding, including approximately \$34 million in American Rescue Plan Act (ARPA) funds (25% of overall project funds), which must be used by December 31, 2026, and would likely need to seek and obtain other funding due to delays.

Length of the Waiver: This waiver will be in effect from Aug. 2, 2024, and will remain in effect until Dec. 14, 2026, the estimated end of the project.

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. 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), FEMA 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.

In most cases, BABAA requirements can be accounted for in the early planning and design stages. However, compliance can be costly when addressing these requirements past these early stages. Provo's goal is to maximize the purchases from compliant sources during the waiver period, while minimizing delays which would result in putting public health and safety at further risk.

3. Description of Award

BRIC Program Description: The program aims to categorically shift the federal focus away from reactive disaster spending and toward research-supported, proactive investment in community resilience. Examples of BRIC projects are ones that demonstrate innovative approaches to partnerships, such as shared funding mechanisms, and/or project design. For example, an innovative project may bring multiple funding sources or in-kind resources from a range of private and public sector partners. Or an innovative project may offer multiple benefits to a community in addition to the benefit of risk reduction. Through BRIC, FEMA continues to invest in a variety of mitigation activities with an added focus on infrastructure projects

benefitting disadvantaged communities, nature-based solutions, climate resilience and adaption and adopting hazard resistant building codes.

Title of Project: Long Term Sustainability for Provo’s Water Supply Project: 2021 BRIC Project

Infrastructure Project Description and Location: The City of Provo, Utah’s Long Term Sustainability for Provo’s Water Supply Project: 2021 BRIC Project consists of the construction of a new water treatment plant, booster pump station, and transmission pipeline to utilize aquifer storage and recovery (ASR) technology to address exceptional drought, including shortages of water in reservoirs, streams, and wells; widespread crop and pasture losses; increased wildfire risk; escalated fire danger; and deteriorating air quality.

Recipient Name: City of Provo, UT

Unique Entry Identifier (UEI): EYDMXDL7KP25

Federal Award Identification Number (FAIN): Federal Emergency Management Agency

Federal Financial Assistance Program: Building Resilient Infrastructure and Communities (BRIC)

BRIC Portion of funding: \$50,000,000

Total Cost of Infrastructure Project: \$142,500,000

4. Waiver Justification Summary

Basis for Public Interest Determination: It is in the public interest to waive the BABAA requirements for this project for the reasons outlined below.

The City of Provo formally requested a public interest-previously planned project waiver because it believes that this project is exigent, and that it is in the public interest to immediately commence work, minimize delays, and construct the project to increase the potable water supply and reduce the cascading effects of the exceptional drought.

BABAA not required in the NOFO: This project applied for FEMA BRIC funding under a NOFO published Aug. 9, 2021, that did not include BABA as a requirement, and was approved for funding at a later date after FEMA’s implementation of BABA.

This project was substantially planned and designed prior to May 14, 2022, the effective date of the BABAA requirements. Requiring full BABA compliance for the project would require, at minimum, an extensive engineering assessment of every product subject to BABAA to identify if there is a domestic option that meets the technical specifications. While a full re-design may not be necessary, the increased time and costs associated with full compliance given that BABA was not considered as a requirement in the design stage could jeopardize the project.

The City of Provo commits to purchase, acquire, or use, to the greatest extent practicable, goods, products, and materials produced in the United States. During the period the waiver is active, FEMA will directly support the City of Provo with technical assistance and market research to help identify goods, products, and materials produced in the United States for use in the project.

Most products for this project must be purchased early in construction and delivered as soon as possible and all the products need to be delivered by Fall 2024. Further delays put access to existing funds at risk. The City of Provo received approximately \$34 million in American Rescue Plan Act (ARPA) funds (25% of overall project funds) which must be used by Dec. 31, 2026. A project of this magnitude will take years to complete and every day the project is delayed increases the risk of the City being unable to use their available ARPA funds, subsequently increasing the risk of the project not being completed.

Anticipated Impact if No Waiver is Issued: The Long Term Sustainability for Provo’s Water Supply Project: 2021 BRIC Project is essential to addressing the exceptional drought in the City of Provo that is resulting in shortages of water in reservoirs, streams, and wells; widespread crop and pasture losses; increased wildfire; escalated fire danger; and deteriorating air quality. Delaying this project would require revising the entire project timeline to account for delays in obtaining other funding, to address increased cost of funding, and increased cost of construction from delay and would impose severe risk of losing other funding from these delays. These impacts are all compounding in the absence of a waiver.

5. 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. FEMA’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.

6. Solicitation for Comments

The proposed waiver was posted on [FEMA’s public facing webpage](#) on May 30, 2024, and a notice of the proposed waiver was also posted to the [Made in America website](#) on May 30, 2024, to satisfy the requirement to publish any proposed Build America, Buy America Act project waiver and provide the public with 15 days to submit comments. FEMA sought public and industry comments from all interested parties through the proposed waiver closing date on June 14, 2024.

FEMA received one public comment on the waiver request that stated that FEMA should not issue this waiver as it is not in the public interest, City of Provo had sufficient time to make any necessary adjustments to comply with the BABAA requirements and that the design for substantial components of the project were not completed until 2023. The commenter also stated that the waiver would allow taxpayer dollars to be spent on imported products for the entire project and until its completion.

FEMA appreciates the input the commenter provided and will continue to evaluate how BABAA requirements may place financial burdens and challenges for its partners. However, the justification described above in Part 4: *Waiver Justification Summary* were not unsubstantiated by the public's comments. As such, FEMA still finds that it is in the public interest to waive the BABAA requirements for this previously planned project and issue the waiver without substantive changes from the version that was posted for public comment.

For more information on the Build America, Buy America Preference, please reference <https://www.fema.gov/grants/policy-guidance/buy-america> or MadeinAmerica.gov.



Robert A. Farmer
Acting Deputy Assistant Administrator
Grant Programs Directorate