



May 30, 2024

**Build America, Buy America Act Proposed 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 proposing 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 the completion of the project.

Applicability: This proposed 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. 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 that initiated and completed significant planning and design prior to the implementation of BABAA.

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. In addition, significant planning and design occurred prior to May 14, 2022, the implementation date of the BABAA requirement.

It is in the public interest to waive the BABAA requirement for this project because at the time of the funding application, the NOFO did not include a reference to BABAA. Additionally, redesigning with consideration of BABAA would impose a substantial, undue cost burden on the community, cause significant project delays, and jeopardize the ability to use time-sensitive funds. The following outlines Provo's project design and planning timeline:

1. Provo applied for Utah State Revolving Loan funding on May 29, 2020, and received a State Revolving Loan funding award on Mar. 23, 2022.
2. Provo applied for a Smart Water Grant on Aug. 5, 2020, and received a Smart Water Grant on Feb. 11, 2021.
3. Provo applied for and obtained aquifer recharge and water quality permits throughout 2020 and 2021.
4. Notices to Proceed for planning, piloting, and engineering design work were issued by Provo on Jul. 1, 2021.
5. A 6-month water treatment technology pilot study was initiated on Nov. 1, 2021.
6. Provo applied for American Rescue Plan Act (ARPA) funding on Dec. 15, 2021, and received an ARPA award on Jun. 9, 2022.
7. In Jan. 2022, Provo applied for funding based on the FY 2021 BRIC NOFO.
8. On Aug. 29, 2022, FEMA award selection categorized Provo's FY 2021 BRIC application as "Identified for Further Review."
9. Design was 100% completed for the two major components of the project in Mar. 2023. The Rock Canyon Pipeline and Booster Pump Station design was completed on Mar. 1, 2023, and the Provo River Water Treatment Plant design was completed on Mar. 31, 2023.
10. Bids were opened Sep. 14, 2023, and Oct. 18, 2023.
11. On Dec. 31, 2023, FEMA awarded the City of Provo a \$50 million BRIC grant.
12. Construction contracts were awarded on Dec. 31, 2023.

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 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 Dec. 31, 2026, and would likely need to seek and obtain other funding due to delays. 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. These impacts are all compounding in the absence of a waiver. 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.

Length of the Waiver: If approved, this waiver will be in effect from the date of issue and will remain in effect until the end of the project, currently estimated to be Dec. 14, 2026.

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.

Planning and Design: The City of Provo, Utah's Long Term Sustainability for Provo's Water Supply Project: 2021 BRIC Project has been in active development for approximately 4 years. Provo submitted initial funding applications in 2020 and issued Notices to Proceed for design of the Water Treatment Plant and Pipeline/Booster Pump Station in Jul. 2021, approximately 4 months prior to BABAA being signed into law in Nov. 2021. BABAA allowed for a 6-month implementation period and the law became effective May 14, 2022. FEMA subsequently issued an adjustment period that waived the BABAA requirements for FEMA projects until Jan. 2, 2023. Substantial planning, design, and funding applications were completed prior to Jan. 2023.

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 ensure resiliency as quickly as possible, and any delays would most likely 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.

The project consists of the following major components:

- Construction of additional piping added to the main trunk of the distribution system to accommodate the increased volume and to convey the treated water to the proposed infiltration site.
- Installation of a new distribution line into Rock Canyon and a new Booster Pump Station for the distribution line.
- Installation of a treatment plant that includes a two-level process area featuring inline coagulation, low service pumps, strainers, pressurized ultrafiltration (UF) membranes and cleaning system, advanced oxidation using UV and hydrogen peroxide, chlorine disinfection, clear-well storage in a below ground tank, high service pumping, compressed air system, and ancillary components or systems including site development and utilities, a new building with HVAC, plumbing, and fire protection, electrical systems including stand-by generator, and instrumentation and controls (SCADA) system.

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 Expenditures: \$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 previously planned project for the reasons outlined below.

BABAA not required in the NOFO: On Aug. 9, 2021, FEMA’s Building Resilient Infrastructure and Communities (BRIC) Program published a Notice of Funding Opportunity (NOFO). This project applied for funding under that NOFO and the BRIC Program later approved it for funding. The FY21 NOFO did not include the domestic preference requirements specified in BABAA.

Previous Planning and Design: This project was substantially planned and designed prior to May 14, 2022, the effective date of the BABAA requirements. According to the City of Provo’s waiver request, this project issued a Notice to Proceed to begin engineering design on Jul. 1, 2021. Between Jul. 1, 2021, and Jan. 2, 2023 (FEMA’s BABAA implementation date), the Pipeline and Booster Pump Station design was 100% complete and the Water Treatment Plant was over 90% complete.

Redesigning 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. The majority of products for this project are required to be purchased early in construction and delivered this spring, and all the products need to be delivered by Fall 2024. The project is currently utilizing their de minimis waiver to purchase the earliest products, which needed to be purchased in early Feb. to avoid additional construction delays and associated costs.

Additionally, further delays put access to existing funds at risk. The City of Provo has 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 or rebid and would impose severe risk of losing other funding from these delays. These impacts are all compounding in the absence of a waiver.

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

The City of Provo is encouraged 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.

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 will be 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 Build America, Buy America Act Project Waiver and provide the public with fifteen (15) days to submit comments. FEMA 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.fema.gov/grants/policy-guidance/buy-america> or [MadeinAmerica.gov](#).