



# Northern Border Regional Commission

## **Northern Border Regional Commission: Proposed Public Interest Previously Planned Project Waiver of the Build America, Buy America Act requirements for the Town of Brighton, VT**

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### **Summary**

This notice served as advisement that the Northern Border Regional Commission (NBRC) is issuing a *public interest previously planned project waiver* of the requirements of section 70914 of the Build America, Buy America (BABA) Act (Buy America preference) included in the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58) for the town of Brighton, Vermont to upgrade a non-compliant and at capacity wastewater treatment facility in Brighton, Vermont.

The Town of Brighton received a \$1 million grant from NBRC, obligated in September 2023, to assist with the increased costs and financing gap needed to complete construction for the previously planned project. The project is now entering the final bid stage and absent a waiver issued by NBRC, the recipient would need to redesign the project, and continue to incur interest and fees for interim financing and development costs, which continue to grow while construction was delayed.

The Town of Brighton, Vermont completed significant design and planning for the project prior to May 14, 2022. The funding for this infrastructure project was approved based on the costs identified in the preliminary engineering report that was completed in 2021, The Town of Brighton applied for and received a \$1 million grant from NBRC to assist with these additional unexpected costs largely related to supply chain constraints.

For the reasons set forth in this notice, NBRC believes that it is in the public interest to issue a limited waiver of Build America, Buy America Act (BABAA) domestic preference requirements for iron, steel, manufactured products and construction materials for this project that was planned prior to the implementation date of BABAA on May 14, 2022, for expenditures made on or after March 18, 2024 up until December 31, 2025. During the period the waiver is active, NBRC encourages the recipient, to the greatest extent practicable, seek to purchase, acquire, or use

goods, products, or materials produced in the United States.

The NBRC posted the proposed notice on February 13, 2024 for a period of 15 days. The notice encouraged public comments on this waiver, specifically with regard to the proposed length, purpose, and scope. No comments were received and therefore no changes were made to the waiver as issued.

### **Background**

The Buy America preference in section 70914 of the BABA 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), 2 CFR 184.7, and in accordance with the Office of Management and Budget's (OMB) October 25, 2023, implementation guidance memorandum on the subject (M-24-02), an agency may waive the application of the Buy America preference, in any case in which it funds that: applying the domestic content procurement preference would be inconsistent with the public interest. All waivers must have a written explanation for the proposed determination; provide a period of not less than 15 calendar days for public comment on the proposed waiver; and submit the proposed waiver to the Office of Management and Budget Made in America Office for review to determine if the waiver is consistent with policy.

In many cases, BABAA requirements can be easily managed and accounted for during the early planning stages of a project, but compliance can be costly and complex past the design phase for infrastructure projects where significant design and planning took place prior to May 14, 2022, the effective date of BABA.

To provide some understanding of how the Town of Brighton will be impacted by this waiver, as with many rural communities, capacity issues in Brighton lengthen the timeframe for the development and design of this project. As a result, the final cost for the project increased from the original estimate costs identified in the preliminary engineering report that was completed in 2021. When project bids exceed the initial award, the Agency does everything it can to ensure the project can proceed. This is a common practice under federal programs that fund construction projects. Cost overruns are even more likely in the current construction environment, where significant cost increases related to supply chain issues have been seen across the country.

NBRC grant funds will be used for the infrastructure project, for associated expenses towards sludge removal costs that will not include material costs of iron, steel, construction materials and manufactured products. NBRC anticipates match resources contributed by the Town (and subject to the terms and conditions of the NBRC federal award) in the estimated amount of \$565,000 will be used for the purchase of materials for the infrastructure project.

The application of BABAA to this previously planned upgrade to a non-compliant and at capacity wastewater treatment facility and the resulting costs were of particular concern for NBRC. This project is now entering the final bid stage and absent a waiver from NBRC, the recipient would need to redesign the project, and continue to incur interest and fees for interim

financing and development costs, which continue to grow while construction is delayed.

NBRC therefore believes it is in the public interest to issue this waiver with no significant changes from the version that was proposed.

### **Issuance of Waivers**

Section 70914(c) authorizes the Federal Agency head (in the case of the NBRC, the Federal Co-Chair) to waive the application of a Buy America preference under an infrastructure program when:

1. Applying the domestic content procurement preference would be inconsistent with public interest (“public interest waiver”);
2. The 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 (“nonavailability waiver”);
3. 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 percent (“unreasonable cost waiver”).

### **Project details**

Federal Agency Office Name: Northern Border Regional Commission

Federal Award Identification Number: NBRC23GBVT10

Financial Assistance Listing Name: Catalyst Grant Program

Unique Entity Identifier: DDCKMEK14C23

Non-Federal Entity Name: Town of Brighton, VT

Total Project Costs: \$4,867,137.00

NBRC award amount: \$1,000,000.00

Estimated infrastructure purchases: \$565,000.00

NBRC anticipates that the products to be purchased for this project that will be covered under this waiver will include: valves and piping, wastewater treatment equipment, and HVAC/plumbing/electrical/building materials including siding/ roofing.

### **Assessment of cost advantage of a foreign-sourced product**

Under OMB Memorandum 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. NBRC’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.



Christopher Saunders  
NBRC Federal Co-Chair

Date: March 18, 2024