

DENALI COMMISSION

Partial Public Interest Waiver

Build America, Buy America Partial Waiver for Rural Power Generation, Transmission, and Bulk Fuel Facilities in small Alaska communities

1. Summary

Agency: Denali Commission

Summary of Proposed Waiver: The Agency is issuing a partial public interest waiver of the requirements of section 70914 of the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) for infrastructure projects funded through federal financial assistance from the Agency to the recipients in small Alaska communities. This waiver will apply to the construction and/or renovation of power generation, transmission, and bulk fuel facilities in Alaska communities with fewer than 2,000 residents. The waiver will permit the use of domestically produced manufactured products and construction materials that do not meet the domestic content requirements. The Agency waives BABA requirements for these recipients because manufacturers have been unwilling or unable to verify whether their products meet the domestic content requirements and therefore our grantees have been unable to verify full BABA compliance.

The duration of this waiver is from the effective date to five (5) years following the effective date. This waiver will remain in effect for five (5) years from the effective date. It applies to all federal financial assistance awards obligated during that 5-year period and, for awards obligated prior to the effective date, to all expenditures incurred on or after the effective date for the remainder of the award period of performance.

Waiver Type: Public Interest

Waiver Level: General Applicability, Regional

Waiver Justification Summary: This waiver permits the use of domestically produced manufactured products and construction materials that do not meet the domestic content requirements, for the construction and/or renovation of power generation, transmission and bulk fuel facilities in Alaska communities with fewer than 2,000 residents. The agency and its grantees have researched over 45 categories of products and conducted multiple interviews with vendors and contractors that work on Alaska's rural power generation, transmission and bulk fuel projects to determine the availability of BABA compliant products. As a result of this effort the agency and its grantees have determined that there are essential products that are domestically produced but fail to meet the 55% domestically produced component requirement.

Length of the Waiver: This waiver will remain in effect for five (5) years from the effective date of this waiver. The waiver applies to all federal financial assistance awards obligated after the effective date and, in the case of awards obligated prior to the effective date, all expenditures for manufactured products, and construction materials incurred after the effective date. This waiver, if finalized, would be reviewed annually.

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), a Federal agency 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 percent. All waivers must have a written explanation for the determination; provide a period of not less than 15 calendar days for public comment on the waiver; and must be submitted to the Office of Management and Budget, Made in America Office for review to determine if the waiver is consistent with policy.

The Office of Management and Budget's Memorandum M-24-02, "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure," dated October 25, 2023, provides that agency may consider whether it is in the public interest to waive application of a Buy America preference based on a variety of policy considerations, including for equity purposes. The Agency has identified a need for such a waiver for construction and/or renovation of power generation, transmission, and bulk fuel facilities in Alaska communities with fewer than 2,000 residents.

Summary of Funding Programs: The Agency is a regional federal agency and is solely focused on the development of rural Alaska communities. In Fiscal Year 2025 the agency received \$30,640,000 in appropriations and \$5,080,595 in interest payments from the Trans Alaska Pipeline Liability (TAPL) fund for a total of \$35,720,595. \$10,085,595 (28%) of this amount was allocated to the construction and/or renovation of power generation, transmission and bulk fuel facilities. Project selection is based primarily on regularly updated; data-informed facility deficiency lists to prioritize replacements or repairs in communities most at risk of catastrophic facility failure. The agency works with the State of Alaska to ensure this list is kept up to date and is used by both the Agency and the State of Alaska to prioritize projects.

Some of the items covered by this waiver are Hi-Fog Water Mist Fire Protection, Instrumentation and Control Devices, Hydronic Equipment, Switchgear, Engine Generators, Radiators and Charge Air Coolers, Overhead and Underground Electrical Distribution equipment.

3. Waiver Justification

Rural Alaska communities are among the smallest, most remote, and most economically constrained in the United States. Spread across a vast geographic region, roughly 200 predominantly Alaska Native villages, most with between 50 and 500 residents, exist entirely off the road system and can be reached only by small aircraft, river barge, or seasonal winter trails. Local economies are primarily subsistence-based, with hunting, fishing, and gathering providing the foundation of food security. Only a limited number of full-time, wage-earning jobs exist in most communities and are typically in the school, clinic, tribal government, utility, or village store, resulting in extremely narrow municipal revenues and minimal cash flow for essential

services. These structural conditions create an operating environment unlike anywhere else in the country.

Within this context, communities rely on stand-alone microgrids and bulk fuel tank farms that form the backbone of every critical service: heat, electricity, water and wastewater operations, health clinics, schools, transportation, and emergency response. Because these systems must operate year-round in harsh arctic and subarctic conditions and are not connected to any larger utility network, their reliability is directly tied to community safety, public health, and basic viability. Geographic isolation drives material and freight costs to several times national averages, while short construction seasons, limited workforce capacity, and high operator turnover make routine maintenance challenging and major capital work highly sensitive to delay. As a result, deferred maintenance carries compounding, costly consequences: small issues become major failures, degradation accelerates, and costs escalate rapidly when narrow construction windows are missed. Together, these factors make rural Alaska's infrastructure environment uniquely fragile and deeply dependent on timely, predictable investment to sustain the essential systems on which every aspect of community life depends.

Due to their small populations, limited cash flow, and subsistence-based economies, these Alaska communities do not have sufficient demand to sustain local manufacturing of energy and bulk fuel infrastructure components. Alaska's small communities are geographically separated from the contiguous United States and rely heavily on established supply chains from the "Lower 48" and from Asia. As a result, nearly all major products and materials must be shipped in, often with long lead times, high and volatile freight costs, and limited flexibility to adapt to domestic sourcing constraints.

Further, after conducting market research the Agency and its grantees have been unable to find BABA-compliant manufactured products that meet the greater than 55% domestic content requirement and the 100% domestic component and processing requirement for construction materials. Therefore, a limited waiver allowing the use of domestically produced manufactured products and construction materials that do not meet the domestic content requirements is essential for Agency projects to move forward.

In considering this waiver, the Agency engaged in a robust Tribal consultation process to gauge the impacts of BABA implementation. The Agency worked with the Bureau of Indian Affairs to ensure the notification for the Tribal consultation was widely received. The Agency worked closely with the Alaska Energy Authority and the Alaska Village Electric Co-op, the two statewide power and energy entities, to ensure Tribal organizations were aware of the opportunity to provide comments. As a result of this outreach, the Agency received 39 written comments, all of which advocated in favor of issuing the waiver.

The most common comments were:

- Remoteness: Most communities are thousands of miles from the nearest major port in the lower 48. This distance makes the transportation of essential components prohibitively expensive.
- Limited local manufacturing: Alaska lacks a domestic manufacturing base for infrastructure materials (e.g. iron, steel and manufactured products). As a result, there is a lack of readily available BABA compliant materials.
- Seasonal Construction limitations: Construction is restricted to short summer seasons and subject to inconsistent weather patterns. Any delays in material deliveries due to BABA

compliance issues can result in year-long postponements, jeopardizing essential energy and fuel infrastructure.

- Supply Chain and Procurement Issues: BABA compliant components often require extended delivery lead times, that exceed the seasonal construction window, leaving communities without the essential components they need to produce power and/or heat for their communities.
- Administrative Burdens: The commenters noted that project specific waiver requests can take several months or more to complete, delaying project starts and resulting in delayed construction. In addition, the Agency notes that many of these small communities have limited staff who are often managing multiple grants/projects. The burden of managing BABA compliance is in addition to the burdens of managing the communities' existing grants/projects.
- Anticipated Program Impacts Absent a Waiver: Without the waiver, infrastructure projects in small Alaska communities will experience challenges with product delivery, availability, reliability, and project scheduling. Infrastructure project schedules rely on readily available products delivered within reasonable timeframes. Due to the extreme distances that manufacturers for products produced in the mainland United States would have to ship products to Alaska and due to the lack of existing local product supply networks for these products, manufacturers may not be able to assure on-time delivery of compliant products and associated projects in these Alaska communities could potentially face unreasonable scheduling uncertainty.

Taken together, these comments underscore that strict application of BABA requirements in small Alaska communities would likely delay or prevent critical infrastructure projects.

4. 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 waiver. The Agency has concluded that this assessment is not applicable to this waiver. As the Agency periodically reviews this waiver, it will perform additional market research as BABA implementation progresses to better understand the market and, where appropriate, limit the use of waivers in cases where any cost advantage is driven by dumped or injuriously subsidized foreign-sourced products.

5. Comments

This waiver was posted for a 15-day public comment period. No comments were received.