



## OFFICE OF WASTEWATER MANAGEMENT

WASHINGTON, D.C. 20460

### **SOLICITATION OF PUBLIC COMMENT FOR PROJECT-SPECIFIC BUILD AMERICA, BUY AMERICA PUBLIC INTEREST WAIVER PROPOSAL**

**SUBJECT:** UNDER EVALUATION: Project-Specific Public Interest Waiver of Build America, Buy America Act Requirements to the City of Granite Falls, Washington for the Wastewater Treatment Plant Upgrade Project

**Introduction:** This solicitation of public comment by the U.S. Environmental Protection Agency (EPA) is to evaluate a Build America, Buy America (BABA) waiver request submitted by an assistance recipient based on public interest for this project that was already under construction at the time it became subject to the BABA requirements. The project would continue to be subject to the American Iron and Steel (AIS) requirements.

This solicitation of public comment does not represent a final agency decision. The purpose of this proposal is to examine if the application of the BABA requirements to the project is in the public interest or whether other factors should be considered in the evaluation of a waiver.

Public comments are requested for 15 days (specific dates noted on the EPA's website). Through this public comment period, commenters may provide information that indicates a waiver may not be needed. Comments should be submitted to [BABA-OW@epa.gov](mailto:BABA-OW@epa.gov). Please include information in the subject of the email identifying it as a public comment on this waiver request, such as "Waiver Comment: Granite Falls Public Interest Waiver" or similar.

#### **Background**

The Buy America Preference set forth in section 70914 of the BABA included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), requires that 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), the EPA 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 U.S. will increase the cost of the overall project by more than 25 percent. Procedurally,

all proposed waivers must: 1) have a written explanation for the proposed determination; 2) provide a period of not less than fifteen (15) calendar days for public comment on the proposed waiver; and 3) be submitted to the Office of Management and Budget's (OMB) Made in America Office to determine consistency with policy.

### **Summary**

Proposed Waiver: The EPA is soliciting comments regarding whether to issue a project-specific waiver of the requirements of section 70914 of the BABA included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), for the Wastewater Treatment Plant Upgrade Project funded as directed in the 2024 Consolidated Appropriations Act.

Waiver Type: Public Interest – Applying the domestic content procurement preference would be inconsistent with the public interest for this project that was already under construction at the time that it became aware that it would receive federal financial assistance and subject to the BABA requirements.

Waiver Level and Scope: Project level waiver for a single project. No other project or award will utilize the waiver.

Proposed Waiver Description: Project-specific waiver of BABA requirements to the City of Granite Falls, Washington, (Applicant) for the Wastewater Treatment Plant Upgrade Project.

Project Summary: This project is taking place in Granite Falls, Washington at the wastewater treatment plant owned and operated by the Applicant. Upgrades to the facility will ensure that the Applicant meets its discharge permit conditions, protects wildlife that rely on the receiving water, and expands the facility's capacity. Improvements will include new oxidation ditches with diffused aeration ultraviolet disinfection and tertiary filtration; effluent cooling towers; solids handling equipment; high efficiency blowers and supervisory control and data acquisition; and a new administration building and laboratory.

Length of the waiver: From the effective date of the final waiver until project completion, estimated to be December 31, 2027.

Summary of the Project Timeline and Background for the Waiver: The Applicant initiated planning for the project in November 2019 completed design in 2022. The Applicant secured state funding through the Clean Water State Revolving Fund (CWSRF) from the Washington State Department of Ecology, and the construction notice to proceed was issued on December 4, 2023. The CWSRF funding did not include federal appropriations, and as such, it did not implicate the BABA requirements for the project. However, the Applicant's project is subject to the AIS requirements, which apply to all CWSRF treatment works projects and information available to the EPA indicates that the Applicant has made good-faith effort to comply with these domestic preference requirements.

In March 2024, the 2024 Consolidated Appropriations Act was signed into law which included congressionally appropriated funds for this project and the Applicant applied to receive its award the following year, in February 2025. The Applicant asserts that its decision to proceed without the BABA requirements was made in good faith because it had no knowledge that it would receive federal

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financial assistance at the time that the project was planned, designed, bid, or when construction was initiated. The EPA agrees with the assertion that the Applicant's decision to exclude BABA requirements from the project was made in good faith based on all the information available along the project timeline and sees no evidence that the project proceeded with the intent to circumvent the BABA requirements. The EPA also notes the project was designed and planned to comply with AIS requirements, and those requirements will be preserved for this project.

Of note, the EPA has an available general applicability waiver for SRF projects for which funding was appropriated in either federal fiscal year (FY) 2022 or 2023, and design planning was initiated prior to the effective date of BABA, the *Amended Public Interest Waiver of Section 70914(a) of P.L. 117-58, Build America, Buy America Act, 2021 for State Revolving Fund and Water Infrastructure Projects that Initiated Design Planning prior to May 14, 2022*. The project is not eligible for coverage under this waiver as it did not receive federal appropriations from the covered fiscal years.

Therefore, the EPA proposes that a public interest waiver be issued, and the BABA requirements for the project be waived because applying the domestic content procurement preference would be inconsistent with the public interest and meets the conditions of a waiver in section 70914(b)(1).

#### **Description of Efforts Made to Avoid the Need for a Waiver**

At the time of preparing, evaluating, accepting, and initiating the construction contract, the Applicant had no knowledge that the BABA requirements would apply to the project. The EPA agrees with the Applicant's assertions that no reasonable efforts to avoid a waiver were applicable prior to commencement of the project. In many cases, BABA requirements can be 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 or construction has begun prior to becoming subject to the requirements.

#### **Anticipated Impact if No Waiver is Issued**

This project is substantially complete as of January 2026. Absent a waiver from the EPA, the recipient would need to redesign the project to remove and replace products that have been installed, all the while continuing to incur interest and fees for interim financing and development costs, which continue to grow while construction is delayed. Alternatively, the Applicant would be put in the position of potentially declining congressionally appropriated funds. The EPA therefore believes granting this waiver request is in the public interest.

#### **Description of Award**

Recipient Name and/or Unique Entity Identifier (UEI): The City of Granite Falls; X2C5N6V577E3

Federal Financial Assistance Identification Number (FAIN): N/A

Federal Financial Assistance Listing Name: 66.202 Office of Water Community Grants Program

Federal Financial Assistance Listing Number: 66.202

Federal Financial Assistance Funding Amount: \$959,752

Total Cost of Infrastructure Expenditures: \$34,195,800

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**GRANITE FALLS**

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**Date:** March 5, 2026

**To:** U.S. Environmental Protection Agency, Region 10 – State Revolving Fund Branch

**From:** City of Granite Falls, Jeffrey A. Balentine, City Manager

**Re:** Request for Public Interest Waiver – Build America, Buy America Act Requirements

**UEI:** X2C5N6V577E3

**Community Grant ID:** CG-03J05701

**Federal Funding:** Congressionally Directed Spending grant for \$959,752 appropriated in FY 2024.

**Recipient:** City of Granite Falls / UEI: X2C5N6V577E3

**Project:** Granite Falls Wastewater Treatment Plant Upgrade

**Project Summary:** Upgrades to Granite Falls WWTP to meet NPDES WA0021130, protect salmon habitat, and address capacity issues. The plant operates at 85% capacity with aging infrastructure.

**Key components include:**

- New oxidation ditches with diffused aeration
- UV disinfection and tertiary filtration
- Effluent cooling towers
- Solids handling equipment
- High-efficiency blowers and SCADA
- New admin building with a laboratory

**Washington State Funding Assistance:** Clean Water State Revolving Fund, #66.458

**Department of Ecology Loan Agreement No:** WQC-2024-GraFal-00005

**Total Loan Funding:** \$34,195,800 (1.6% over 30 years)

**Executed:** December 15, 2023

**Federal Dedicated Equivalency Project:** No

**Substantial Completion:** January 2026

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The City of Granite Falls requests a waiver for the following categories of products for which BABA requirements apply:

- UV disinfection systems
- Tertiary filtration equipment
- High-efficiency turbo blowers
- SCADA panels and instrumentation
- Variable frequency drives
- Non-ferrous piping and fittings
- Gaskets, water stops, and joint sealants
- Electrical materials and systems
- Process controls and monitoring equipment
- Sealants, paints, primers, and coatings



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### Basis for Public Interest Waiver

#### Timeline of Events:

- **November 2019 – 2022:** City initiated and completed project planning, including Wastewater Facilities Plan (2018), Facilities Plan Amendment (2022), Tier II water quality analysis (April 2022), cultural resources investigation (June 2022), and environmental review with SEPA DNS (September 2022)
- **December 4, 2023:** Construction Notice to Proceed issued to [REDACTED] following a competitive bidding process compliant with Washington State procurement requirements (RCW 39.04, 39.80, 39.12, WAC 173-98)
- **December 15, 2023:** Ecology loan agreement executed, 11 days after construction commenced. Agreement contained contradictory language:
  - Budget Section (Page 13): "The portion of this project funded with this funding distribution comes from **non-federal source** and are not subject to Federal Funding Accountability and Transparency Act (FFATA) and Single Audit Act (SAA)."
- **March 2024:** Congressional Direct Spending grant is appropriated to Granite Falls
- **January 2026:** Substantial completion achieved

#### Good Faith Compliance:

By the time the Agreement with DOE was signed, construction had already begun, and all major equipment procurement decisions (UV systems, filtration, blowers, SCADA) had been made months earlier during the design and bidding process. The City of Granite Falls acted in good faith based on all available information throughout the project timeline. The City:

- Followed all Washington State laws for competitive bidding and procurement
- Engaged a qualified consulting engineer [REDACTED] with extensive WWTP and SRF project experience
- Completed a thorough environmental review
- Secured all necessary permits before starting construction
- Reasonably interpreted the loan agreement as a State SRF loan with federal crosscutting requirements (common in state-administered programs), rather than a federally funded project that would trigger BABA domestic preference mandates

#### BABA Waiver Rationale:

1. Requiring retroactive BABA compliance would impose **\$7.9-11.6 million in additional costs** (23-34% of total project cost):

| Category                                      | Estimated Cost                    |
|-----------------------------------------------|-----------------------------------|
| Demolition and removal of installed equipment | \$800,000 - \$1,200,000           |
| BABA-compliant replacement equipment          | \$3,500,000 - \$5,000,000         |
| Reinstallation labor and startup              | \$1,200,000 - \$1,800,000         |
| Engineering redesign and re-permitting        | \$250,000 - \$400,000             |
| Construction delay costs                      | \$600,000 - \$900,000             |
| Lost treatment capacity / bypass penalties    | \$400,000 - \$800,000             |
| Contingency (15%)                             | \$1,100,000 - \$1,500,000         |
| <b>TOTAL</b>                                  | <b>\$7,850,000 - \$11,600,000</b> |



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2. This would increase the total project cost to \$42-46 million (35-47% cost overrun), which would:
  - Exceed the City's borrowing capacity
  - Require sewer rate increases of 40-60% beyond planned increases for a community with a median household income 88% of the state average
  - Potentially make the project financially infeasible
3. **The equipment already installed is functional, meets all performance specifications, and serves its intended environmental and public health purpose.**
  - Destroying and replacing it generates no incremental public benefit while consuming federal loan proceeds that could support additional water quality improvements
4. **Environmental and Public Health Harm:** Dismantling and replacing equipment would delay completion by 12-18 months. During this period:
  - **Continued NPDES permit violations** – Aging plant periodically violates temperature, phosphorus, and fecal coliform limits, degrading Pilchuck River water quality
  - **Continued harm to ESA-listed species** – Elevated effluent temperatures harm Puget Sound Chinook salmon, steelhead, and bull trout in the designated Critical Habitat. New cooling towers (already installed and operational) are essential to reducing thermal pollution; removing them would extend harm for over a year
  - **Regulatory enforcement risk** – Ecology has the authority to impose fines and enforcement actions; voluntary delay could expose the City to liability
  - **Economic development freeze** – Without adequate capacity, the City cannot issue new sewer connection permits, halting development
  - **Operational risk** – Operating at/above capacity with aging equipment creates significant bypass risk
5. **No Harm to Domestic Manufacturing:**
  - The equipment and materials have already been manufactured and installed
  - No U.S. manufacturer is harmed by this waiver; they were not denied opportunity at the time of original procurement and would not materially benefit from forced replacement

Respectfully,

**Jeff Balentine**

City Manager, City of Granite Falls, Washington