



CITY OF SLIDELL
BUILD AMERICA BUY AMERICA
CONTRACTOR GUIDELINES

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Prepared for the U.S Department of HUD
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**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
BUILD AMERICA, BUY AMERICA (BABA) ACT REQUIREMENTS
CONTRACTOR'S GUIDE**

OVERVIEW

The Build America, Buy America (BABA) Act, 41 USC § 8301 note, was enacted in the Infrastructure Investment and Jobs Act on November 15, 2021. The BABA Act requires that products purchased in connection with infrastructure projects funded by Federal financial assistance (FFA) programs must be produced in the United States (U.S.). This requirement is known as the “Buy America Preference (BAP)” (or “domestic procurement requirement”). The purpose of the BABA Act is to stimulate private sector investments in American manufacturing, bolster critical American supply chains, and support the creation of jobs so that America’s workers and firms can compete and lead globally.

WHAT DOES IT MEAN?

Section 70914 of BABA requires that:

Products purchased in connection with infrastructure projects funded with Federal Financial Assistance programs must be produced in the United States. BABA applies to any of these products for infrastructure projects:

- Iron or steel products
- Manufactured products
- Construction material

BABA requirements apply to all awards by a Federal agency to a non-Federal entity (Tribes, TDHEs, public housing authorities, states, cities, counties) through Federal Financial Assistance programs. Federal Financial Assistance programs include:

- Federal Grants
- Cooperative agreements
- Direct appropriations
- Loan guarantees
- Other financial assistance

WHAT INFRASTRUCTURE IS COVERED?

Infrastructure Projects include the Construction, Alteration, Maintenance, or Repair of:

- Buildings and real property
- Utilities
- Water systems (both drinking water and wastewater)
- Electrical transmission facilities and systems
- Broadband infrastructure
- Transportation related-infrastructure (roads, highways, bridges), and more

**Infrastructure to be construed "broadly".*

WHAT MATERIALS ARE COVERED?

Materials covered include:

- Iron or steel products
- Manufactured products
- Construction materials

**Note: Sec. 70917(c) excludes aggregates (cement, stone, sand, gravel) from the definition of construction materials*

WHAT IRON OR STEEL IS CONSIDERED PRODUCED IN U.S.?

Iron and steel is considered produced in U.S. as follows:

- Iron or Steel that "consist wholly or predominantly of iron, or steel, or both"
- All manufacturing processes, from initial melting stage through application of coating, must occur in the U.S.
- For additional information and the latest resources see [Made in America Office website](#)
- For more guidance on definitions, refer to the [2 CFR 184](#) or [2 CFR 200](#)

WHAT CONSTRUCTION MATERIALS ARE COVERED?

Construction materials considered to be covered are as follows:

- Non-ferrous metals (e.g. lead, stainless steel, tin, brass, aluminum)
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
- Glass (including optic glass)
- Fiber optic cable
- Optical fiber
- Lumber
- Drywall
- Under OMB proposed rule, also includes coating (paint), brick, engineered wood

WHAT CONSTRUCTION MATERIALS ARE CONSIDERED PRODUCED IN U.S.?

Materials considered produced in U.S.:

- ALL manufacturing processes for the construction materials must have occurred in the U.S.
- Some examples:
 - Lumber. All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States
 - Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States

WHAT MANUFACTURED PRODUCTS ARE CONSIDERED PRODUCED IN U.S.?

Materials considered produced in U.S.:

- Manufactured products are materials, articles or supplies incorporated in an infrastructure project that are not iron/steel and not one of the listed construction materials
- OMB is proposing that the manufactured product must have been manufactured in the United States
- The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product

CAN WE APPLY FOR WAIVERS?

Who Applies for Waivers

- Recipients of FAA funds from HUD are responsible for applying for waivers

Application for Waivers:

- Section 70914 of BABA establishes the scope, criteria, and process for issuing waivers
- Executive Order 14005 and OMB management memorandum M-21-26 require that OMB's made in America Office review all proposed waivers. All proposed waivers must be in writing, appear in the Federal Register and allow for 15 days of public comment
- If the waiver is one of general applicability applying to multiple awards, the comment period must be 30 days (MAIO)
- HUD reviews waivers before they are posted to the Federal Register for public comment and sent to MIAO for approval
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What Types of Waivers are Available?

- General applicability (broad scope), or
- Project specific

WHAT IS THE BASIS FOR THE WAIVER?

Basis for waivers are as follows:

- Public interest
- Non-availability of materials
 - Not available in the quantity
 - Not available at the quality
 - Results in an increase in the cost of the "project" by more than 25 percent -all proposed waivers must appear in the Federal Register and allow for 15 days of public

General Waivers			
Small Grants	De Minimis	Exigent Circumstances	Tribal Consultation
BABA requirements do not apply to infrastructure projects whose total cost is equal to or less than the current Simplified Acquisition Threshold of \$250,000. This waiver is currently in effect as of November 23, 2022.	BABA requirements do not apply for a De Minimis portion of an infrastructure project, meaning a cumulative total of no more than 5 percent of the total cost of the iron, steel, manufactured products, and construction materials, up to a maximum of \$1 million. This waiver is currently in effect as of November 23, 2022.	This waiver applies when there is an urgent need by a recipient to immediately complete an infrastructure project because of an “exigent circumstances,” or a threat to life, safety, or property of residents and the community. This waiver is currently in effect as of November 23, 2022.	This waiver is effective for Tribal recipients through May 22, 2024. HUD issued a public interest waiver for the BAP as it applies to Tribal recipients to allow time for HUD to consult with Tribally Designated Housing Entities, and other Tribal Entities on how to apply the BAP.

Project/Product-Specific Waivers		
Non-Availability	Unreasonable Cost	Public Interest
<p>For this type of waiver to be granted, HUD must determine that it will waive BABA requirements because HUD and agrees that the product needed is not produced in the United States in sufficient quantities or of a satisfactory quality.</p> <p>In their waiver request, recipients should:</p> <ul style="list-style-type: none"> • Demonstrate that they have conducted market research and adequately considered qualified alternate items. • Describe the due diligence performed, including information, quotes, and/or responses from manufacturers, distributors, or suppliers. 	<p>For this type of waiver to be granted, HUD must determine that it will waive BABA requirements because the adherence to BABA requirements will increase the cost of the overall project by more than 25 percent.</p> <p>In their waiver request, recipients should:</p> <ul style="list-style-type: none"> • Demonstrate that BABA compliance increases total project cost by more than 25%. • Determine the additional cost of BABA compliant products. • Determine the dollar amount to be waived. • Demonstrate that no domestic alternatives are available within the project budget. 	<p>For this type of waiver to be granted, HUD must determine that it will waive BABA requirements requiring compliance with such requirements is inconsistent with the public interest.</p> <p>In their waiver request, recipients should:</p> <ul style="list-style-type: none"> • Explain how waiving the BABA requirement for this project or product serves the public interest. • Demonstrate definite impacts on the community if specific items, products, or materials are not utilized in an infrastructure project.

APPLICATION

BAP WILL APPLY TO	IRON AND STEEL	SPECIFICALLY LISTED CONSTRUCTION MATERIALS	ALL CONSTRUCTION MATERIALS	OTHER	MANUFACTURED PRODUCTS
CDBG Formula Grants	All Funds Obligated On Or After November 14, 2022	As Of The Date HUD Obligates New FFA From FY24 Appropriations	As Of The Date HUD Obligates New FFA From FY 25 Appropriations		As Of The Date HUD Obligates New FFA From FY 25 Appropriations

Best Practices for Contractors

If you're working on a project that's federally funded in any respect, compliance with applicable Buy American requirements is critical to your bottom line. Stay on top of the regulations with these best practices:

- **Get certification from your suppliers.** Obtain supplier certification confirming that the construction materials or manufactured products comply with BABA requirements.
- **Share liability.** Construction contracts with subcontractors and suppliers should include language making these parties responsible for the cost of non-compliance with BABA.
- **Stay current with requirement changes.** Laws change frequently. Pay close attention to bulletins issued by federal agencies such as the Office of Management and Budget. Conditions for waivers could change along with the types of construction materials subject to BABA. Exceptions to the rule may also change. While cement and aggregates are not currently included in BABA, that could change.
- **Don't count on a waiver.** BABA is in place for a reason, so waivers will not be easy to obtain and are likely to be project or even product specific. Perform your due diligence, be aware that the timing to implement BABA requirements is not uniform for all federally funded infrastructure projects, and make sure BABA requirements applicable to the project are met.
- **Consider dedicating a person to BABA oversight.** Documentation is key so make sure you record all facts surrounding the job and BABA compliance. Task someone in your organization with tracking documentation or consider having a dedicated person in charge of compliance with BABA. Whenever in doubt seek legal advice.

Failure to comply with applicable BABA requirements can result in the need for removing and replacing completed work at your cost, termination from the contract and potentially even debarment from performing federally funded work. In addition, knowingly failing to comply with Buy American requirements can lead to liability under the [False Claims Act](#), penalties under which includes treble damages.

SUMMARY

The prime contractor and all subcontractors (all tiers) must comply with the requirements of the BABA Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, as applicable to the Community Development Block Grant (CDBG) infrastructure project. Pursuant to the U.S. Department of

Housing and Urban Development's (HUD's) notice, "Public Interest Phased Implementation Waiver for FY2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" ([88 FR 17001](#)), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

1. All iron and steel materials purchased for a CDBG infrastructure project must be produced in the U.S. unless the project or purchase qualifies for a waiver or exemption.
2. The contractor must maintain records that verify compliance with the BAP requirement for iron and steel materials and provide them to the CDBG Grantee/unit of general local government (UGLG).
3. HUD requires CDBG contractors to use iron, steel, manufactured goods, and construction materials that are produced in the United States in a manner that complies with the Build America, Buy America (BABA) requirement for projects that involve the construction, alteration, maintenance, or repair of a public facility. Infrastructure projects awarded CDBG funds in or after 2023 are subject to the requirements for iron and steel.

Additional information is provided on the HUD BABA website at: https://www.hud.gov/program_offices/general_counsel/baba.

BUILD AMERICA BUY AMERICA (BABA) CERTIFICATION

HUD requires CDBG contractors to use iron, steel, manufactured goods, and construction materials that are produced in the United States in a manner that complies with the Build America, Buy America (BABA) requirement for projects that involve the construction, alteration, maintenance, or repair of a public facility.

As a prospective bidder for the proposed CDBG project, I certify that I have read, understand, and will comply with the "Build America, Buy America" provisions as required by federal law.

Furthermore, I understand that BABA provisions apply to any and all portions of this project, including subcontracted portions; and I certify to the best of my knowledge and belief, that I will identify domestic sources of BABA-covered products, provide verification documentation for BABA-compliance, and when needed provide waiver documentation per current CDBG guidance.

I understand that a false statement on this certification may be grounds for rejection or termination of any contract.

Signature of Bidder: _____ Date: _____

Printed Name and Title of Authorized Representative: _____

Name of Bidder's Company: _____

Bidder's Company Address: _____

Telephone Number: _____

PURPOSE: The Bidder's "Build America, Buy America" Certification is used to certify that, as required by federal law, all of the iron, steel, manufactured products, and construction materials permanently incorporated into a project funded with assistance by the CDBG funds are produced in the United States in a manner that complies with the BABA requirement, unless a waiver is granted by the Office of Management and Budget (OMB) or Housing and Urban Development (HUD).

GENERAL INFORMATION: Build America, Buy America (BABA) guidance requires the following Buy America preference:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.