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Build America, Buy America (BABA)

BABA is the [Build America, Buy America Act](#) as defined in [2 CFR Part 184.3](#). BABA requires any “infrastructure project” funded by any “Federal Financial Assistance” (FFA) apply a domestic content procurement preference, meaning that all iron, steel, manufactured products, and construction materials used in the infrastructure project have been produced in the United States, unless the awarding agency has issued a waiver of this requirement. This is called the “Buy American Preference” (BAP).

General information

Similar to Davis Bacon, IHFA will not be investing in projects that trigger BABA at this time.

Applicability

BABA applies to all projects with Federal Financial Assistance.

General Waivers

HUD issued the following general waivers:

Exigent Circumstances Waiver

- Urgent need by grantee to immediately complete an infrastructure project because of a threat to life, safety, or property of residents and the community.
- Effective from November 23, 2022 until November 23, 2027.

Small Grants Waiver

- Waives BAP for all infrastructure projects whose total cost (from all funding sources) is equal to or less than the simplified acquisition threshold defined in 2 CFR 200.1 (currently \$250,000)
- Effective from November 23, 2022 until November 23, 2027

De Minimis Waiver

- Allows grantees to waive the BAP for materials whose total cost is less than 5% of all covered materials used in a project (up to \$1,000,000). If a project has a need for a particular product(s) for which no domestically produced equivalent is available and the cost is below the De Minimis limit, the BAP can be waived for that product(s) only up to the amount of the calculated limit or \$1,000,000 (whichever is less)
- BAP will still apply to the other materials used in the project.
- Effective from November 23, 2022 until November 23, 2027

Project Specific Waivers

A request may be made for specific waivers from the BAP on a case-by-case basis, after consultation and review with HUD which can take some time. Agencies may apply for three (3) different waivers by:

- Contacting the HUD program Office for BABA technical assistance.
- Collecting the necessary information for the waiver application using the Build America Buy America Waiver Request [form](#).
- Submitting the Request form and all necessary information to HUD’s [BABA Waiver Submission Site](#).
- All waivers are posted on [MadeInAmerica.gov](#)

Public Interest Waiver

Granted if requiring the use of the American made product would be inconsistent with the public interest.

In the waiver application, Agencies should:

- Explain how waiving the BAP 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.

Non – Availability Waiver

Granted if the product needed is not produced in the United States in sufficient quantities or of satisfactory quality.

In the waiver application, Agencies should:

- Demonstrate that they have conducted market research and adequately considered alternate items that meet the definition of Made in America.
- Describe the due diligence performed, including information, quotes, and/or responses from manufacturers, distributors, or suppliers.

Unreasonable Cost Waiver

Granted if the inclusion of the product produced in the United States will increase the cost of the overall project by more than 25 percent.

In the waiver application, Agencies should:

- 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.

Manufacturing Extension Partnership (MEP)

The MEP National Network supplier scouting services leverage relationships and knowledge of U.S. manufacturing capabilities to identify U.S. manufacturers with specific production and technical capabilities and connect them to new customers. Helping to identify and connect domestic suppliers with purchasers, responding to the specific needs of agencies to meet Build America, Buy America requirements.

Idaho MEP scouting services are through

<https://www.techhelp.org/>

Definitions

The following key terms and definitions apply to Build America, Buy America (BABA) for CPD programs as defined in the BABA statute found in [2 CFR part 184](#).

Buy American Preference (BAP)

Means the “domestic content procurement preference” which requires Federal funds to be obligated for an infrastructure project if all the iron, steel, manufactured products, and construction materials incorporated are produced in the United States.

Infrastructure

Described in 2 CFR 184.4(c) and encompasses public infrastructure projects, which include, at a minimum: the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging

Infrastructure Project

Any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project.

Made in America Office (MIAO)

Means the office at the Office of Management and Budget, established by section 70923 of BABA, this is charged with enforcing compliance with BABA and establishing the procedures to review waiver requests.

Construction materials

Articles, materials or supplies that consist of only one of the items listed below:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass;
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

Manufactured products

Articles, materials, or supplies that have been:

- Processed into a specific form and shape; or

- Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

Produced in the United States

- In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- In the case of manufactured products:
 - The 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 (55%) of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product. *See* [§ 184.2\(a\)](#). The costs of components of a manufactured product are determined according to [§ 184.5](#).
- In the case of construction materials, all manufacturing processes for the construction material occurred in the United States. *See* § 184.6 for more information on the meaning of “all manufacturing processes” for specific construction materials.