



Build America, Buy America Act

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What is BABA?

- Build America/Buy America
- A part of the Infrastructure and Jobs Act (Nov. 2021)
- Bipartisan Infrastructure Law, Infrastructure Act – A once-in-a-generation investment in our nation's infrastructure
- Historic opportunity to increase domestic manufacturing with this game-changing law



Infrastructure Investment and Jobs Act (2021)

Arkansas to receive an est. \$4 billion over 5 years



Chart: Arkansas Democrat-Gaze • Source: The White House • Created with [Datawrapper](#)

The Purpose

- We are rebuilding America's roads, bridges and rails, expanding access to clean drinking water, ensuring every American has access to high-speed internet
- All while maximizing the use of American iron and steel, manufactured goods and construction materials

The Goals

- Stimulate private sector investments in domestic manufacturing
- Bolster critical supply chains
- Support the creation of good-paying union jobs
- America's workers and firms can compete and lead globally

We Learned

- America's critical supply chain has gaps
- Takes time to find supplies and scale up production to meet demand

Iron and Steel Requirements

- All iron and steel used in covered projects must be produced in the US
- This means ALL manufacturing processes, from the initial melting stage through the application of coatings occurred in the US.

Manufactured Requirements

- All manufactured products are produced in the US
- This means the manufactured product was manufactured in the US, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the US is **greater than 55% of the total cost of all components of the manufactured product**

Construction Materials Requirements

- All construction materials used in covered projects are manufactured in the US.
- This means that all manufacturing processes for the construction material occurred in the US

Construction Materials

- Include an article, material, or supply that is or consists primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; and drywall

BABA Guideline

- Establishes a preliminary standard for construction materials, requires the last two steps in the manufacturing process of the construction material be completed in the US.
- OMB is seeking stakeholder input as it works to update this preliminary standard with a final standard, consistent with BABA

Infrastructure Examples

- Roads, highways, and bridges
- Public transportation
- Dams, ports, harbors, and other maritime facilities
- Intercity passenger and freight railroads
- Airports
- Water systems
- Electrical transmission facilities and systems
- Utilities
- Broadband infrastructure
- Buildings and real property

Infrastructure Does Not Apply To

- Private homes for personal use
- Tools, equipment, and supplies brought to a construction site and removed at or before the completion of the project or to equipment and furnishings used at or within the finished infrastructure project, but which are not an integral part of the structure or otherwise affixed to the project.
 - Ex. Chairs

Infrastructure Example

- BABA conditions would apply to the funds used to construct a library, but not to funds used to buy books or furniture for the library.
- Questions about what applies: Contact the funding agency

BABA Covers

- Applies to federal financial assistance awards (e.g., grants and loans) made after May 14, 2022 that will be used to:
 - Construct
 - Alter,
 - Maintain, or
 - Repair infrastructure in the US

BABA Applies To

- Federal financial assistance programs for infrastructure, **whether or not** those programs received funding in the Infrastructure Act
 - funds used for an infrastructure project,
 - **regardless of whether infrastructure is the primary purpose** of an award, and
 - even if federal funds are not paying for the entire project
- **Only** applies to infrastructure portions of an award (rather than supplies, equipment, furniture, etc.)

Waivers

- **Funding Agencies** have the authority to issue **waivers**
- First, take proactive steps to identify qualifying Made in America
- If worked diligently to identify qualifying items, but cannot, contact the funding agency to apply for a waiver.

Waivers Should

- Be Limited: Project or award-specific when possible, and time-limited when not limited to certain projects or awards
- Be Targeted: Cover only the products or category of products necessary
- Be Conditional: Include conditions on the waiver, when appropriate and consistent with law
- Be used judiciously

Types of Waivers

- Non-availability Waiver
- Unreasonable Cost Waiver
- Public Interest Waiver

Non-availability Waivers

- One or more iron or steel items, manufactured products, or construction materials are not produced in the US in a sufficient and reasonably available quantities or of a satisfactory quality

Unreasonable Cost Waivers

- Available if the inclusion of iron, steel, manufactured products, or construction materials produced in the US will increase the cost of the overall **PROJECT** by more than 25%

Public Interest Waivers

- Applying the domestic content procurement preference for one or more iron or steel items, manufactured products, or construction materials would be inconsistent with the public interest
- Most flexible type of waiver, but like all waivers, must be necessary and appropriately justified

Waivers Purpose

- Will not be an alternative to increasing production
- But rather a tool to promote the investment in our domestic manufacturing
- Will send clear market signals, creating an incentive for American firms to invest in America and create good jobs in our communities

Waiver Process Requirements

- Federal agencies must post waivers for at least 15 days for public comment
- Agencies should consult with MIAO prior to posting a waiver with broader applicability to ensure it covers no more than necessary
 - Ex. Program-level waiver



Waiver Process Requirements

- Agencies must submit waivers to MIAO for review after public comments to determine if it is consistent with policy
- MIAO, working with GSA, is working to build a functionality on the existing waiver transparency website



Waiver Process Requirements

- Agencies with existing general applicability waivers that are more than five years old (unless those waivers are product-specific) must begin reviewing those waivers by November 15, 2022. In the meantime, those waivers remain in force
- Questions: Contact the funding federal agency

Remember

- BABA has NO expiration

Online Resources

- **BuyAmerican.gov**
- **MadeinAmerica.gov (OMB)**
- **NLC.org**
- **<https://www.fema.gov/grants/policy-guidance/buy-america>**
- **<https://www.whitehouse.gov/omb/briefing-room/2022/04/20/how-build-america-buy-america-guidance-strengthens-made-in-america-requirements/>**

To Do List

- Certification for bidders to sign acknowledging including BABA in bids
- Include BABA language in bid specs & contracts where applicable
- AML will have sample ones soon



Thank you

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