



Build America, Buy America, Act (BABA) Requirements for CDBG Projects

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Georgia Department of
Community Affairs
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM



What is BABA?

- Enacted in the Infrastructure Investment and Jobs Act signed by President Biden on November 15, 2021.
- Requires that products purchased in connection with infrastructure projects funded by Federal financial assistance programs must be produced in the United States.
 - This requirement is known as the “Buy America Preference (BAP).”
- The following products used in Federally funded infrastructure projects must be produced in the United States:
 - Iron and steel;
 - Manufactured products; and
 - Construction materials.
- For the purposes of BABA, an infrastructure project is defined as any project that includes the following activities:
 - Construction,
 - Alteration,
 - Maintenance,
 - Repair.

Definitions

Buy America Preference (BAP)

- Statutory requirement that Federal funding for infrastructure projects use “covered materials” that are “American-made.”

Federal Financial Assistance (FFA)

- Grants
- Cooperative agreements
- Non-cash contributions
- Direct assistance
- Loans
- Loan guarantees
- Other financial assistance

Infrastructure

- Buildings and real property
 - Including housing
- Utilities
- Water systems (drinking water and wastewater)
- Electrical transmission facilities and systems
- Broadband infrastructure
- Transportation infrastructure

Definitions Cont'd

Construction Materials

Includes all raw materials used in construction, including:

- metals other than iron/steel,
- plastic materials such as PVC pipe,
- glass,
- lumber,
- drywall.
- Does not include cement and aggregates (stone, sand, gravel).

Manufactured products

- A material or supply used in an infrastructure project that is not iron or steel or a construction material.
- When two or more materials are combined, they should be treated as a manufactured product.

Iron and steel

Includes materials that are primarily composed of iron or steel.

HUD Construction Materials Groups

HUD’s waiver breaks construction materials into two groups for the purposes of HUD’s phased implementation: “specifically listed” and “all other construction materials.”

- **Specifically Listed**

- Metals other than iron or steel (non-ferrous metals)
- Lumber
- Composite building materials
- Plastic and polymer-based pipe and tube (e.g., PVC pipe)

- **All Other Construction Materials**

- Glass
- Drywall
- Other construction materials

- **Manufactured Products**

- A material or supply used in an infrastructure project that is not iron or steel or a construction material.

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	All Other Construction Materials	Manufactured Products
CDBG Formula Grants	All funds obligated on or after November 15, 2022	As of the date HUD obligates new FFA from FY24 appropriations	As of the date HUD obligates new FFA from FY25 appropriations	As of the date HUD obligates new FFA from FY25 appropriations



HUD General Waivers

Phased Implementation

- Waiver published March 15, 2023, establishes a phased implementation Phased Implementation schedule for application of the BAP to HUD programs.

Exigent Circumstances

- BAP may be waived if projects must be completed immediately to protect life, ensure safety, or prevent the destruction of property
- Effective until November 23, 2027

De Minimis, Small Grants, & Minor Components

- BAP waived for projects with a total cost of \$250,000 or less
- BAP waived for a de minimis portion that comprises no more than 5 percent of the total cost of covered materials used in a project, up to \$1 million
- Effective until November 23, 2027

De Minimis, Small Grants, & Minor Components General Waiver

- However, in connection with the public housing program, evaluation of certain maintenance and repair activities within the definition of infrastructure projects under the Act is not appropriate using this standard. Therefore, for the purposes of determining the applicability of this waiver in connection with the maintenance and repair of public housing, HUD will evaluate the infrastructure project as including the single relevant procurement contract for such maintenance or repairs, or, where applicable, the collection of procurements focused on the same specific objective (e.g., construction of a resident service space) or limited scope of work (e.g., lead based paint abatement).
- Effective until November 23, 2027

De Minimis Limit – 5% of total costs not to exceed \$1mill

- If a project's total material cost is \$450,000, the de minimis waiver can be used to purchase up to \$22,500 in materials from foreign sources

Step 5a:

Calculate the *De Minimis* limit for the project:

The total cost of all covered materials includes all iron and steel, construction materials, and manufactured products used in the project, regardless of whether the BAP currently applies under the Phased Implementation waiver.

Enter the total cost of all covered materials:	
Multiply that amount by 0.05 (5%):	
Enter the lower of the number calculated in the row above or \$1,000,000:	

The amount in the third row above is the *De Minimis* limit for this project. The BAP can be waived for covered materials from foreign or unknown sources at a cost not to exceed the *De Minimis* limit of 5% of the total cost of materials or \$1,000,000 (whichever is less). The BAP will still apply to other covered materials used in the project. **Attach a list of covered materials and their associated costs to which the *De Minimis* limit has been applied.**

Project-Specific Waivers

- Three categories of waivers:
 - Public interest: BAP would be inconsistent with the public interest.
 - Most difficult project specific waiver to obtain, per HUD
 - Nonavailability: covered materials are not produced in the US in sufficient and reasonably available quantities or of a satisfactory quality.
 - Unreasonable cost: inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25 percent.

Project Specific Waivers

- Considerations:
 - Consult with DCA regarding the availability of General Waivers
 - Market research to support the need for a waiver, such as documenting results of supplier scouting services from the Manufacturing Extension partnership.
 - HUD Grantees must submit waiver through HUD's portal
 - <https://www.hudexchange.info/resource/7058/baba-waiver-system-grantee-user-manual/>
- HUD coordinates with Office of Management and Budget/MIAO
- Ultimate approval is provided by Office of Management and Budget/MIAO
- 15-day comment period
- MIAO publication
- To date, HUD has not submitted any project-specific waivers.

Phased Implementation

BAP now applies to projects with FFA greater than \$250K:

- 2023 Projects – iron, steel
- 2024 Projects – iron, steel, specifically listed construction materials
- 2025 Projects – iron, steel, specifically listed construction materials, & manufactured products

BAP does not apply to:

- Non-infrastructure funding.
- Infrastructure projects with a total costs of \$250K or less
- CDBG-DR, CDBG-MIT, CDBG –CV projects
- Projects qualifying under another HUD general waiver

BABA Applicability

The BAP is now in effective

2023 Projects - iron or steel

2024 Projects – iron, steel, specifically listed construction materials

2025 Projects – iron, steel, specifically listed construction materials, & manufactured products

BAP will apply to...	Iron and Steel	Specifically Listed Construction Materials	All Other Construction Materials	Manufactured Products
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Demonstrating Compliance

- Prior to the drawdown of construction funds, the Certificate of Origin must be provided.
- Recipients will ensure the products delivered to the construction site are accompanied by proper documentation that demonstrate compliance with the law and made available to the funding authority upon request.
- Signed certification letter from the manufacturer for the project is the most direct and effective form of compliance documentation for ensuring products used on site are BABA-compliant prior to their installation

Manufacturer's Certification



Mueller Co. LLC
1200 Abernathy Road NE
Suite 1200
Atlanta, GA 30328

phone: 770-206-4200
fax: 770-206-4271
muellercompany.com

Build America, Buy America Act Certification

August 29, 2024

Project: CRAWFORD GRADING WARM SPRINGS WATER PROJECT 23p-x-099-2-6361
Location: WARM SPRINGS, GA
Order Nr.: 53813343
Letter Ref. Nr.: GFC - 5233

We certify as of the date hereof, the following iron and steel products shipped/provided to the subject project are in full compliance with the Build America, Buy America Act (BABAA) requirement as mandated in the Infrastructure Investment and Job Act (IIJA) Pub. L. No. 117-58-§§ 70901-52.

Items, Products and/or Materials:

	Part#	Description	Size	Qty	Manufacturing Location
1.	423-544551	Hydrant	4" BURY	14	Albertville, AL
2.	06AA236123LN	Gate Valve - Resilient Wedge	6"	19	Chattanooga, TN

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Sincerely,

Karli Peadro
Government Funding Compliance Specialist
kpeadro@muellerwp.com

- Basic elements of sufficient documentation:
 - Project name, project location, contract number, or project number
 - Description of product(s) (simple explanation sufficient to identify the product(s)), or an attached purchase order, invoice, or bill of lading.
 - Attestation statement referencing Infrastructure Investment and Jobs Act (“IIJA”) or the Bipartisan Infrastructure Law (BIL) and American Iron and Steel (AIS) requirements
 - Manufacturing location (s)
 - Signature of representative certifying knowledge of manufacturing processes.

Contract Requirements

- Architect/ Engineer contract should include, as a basic service, obtaining and maintaining all BABA documentation (particularly manufacturers' certifications) during construction, which shall be transferred to the recipient. The architect or engineer will need to certify to this action at the project's end.
- At a minimum, the following must be included in all construction contract documents: All requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, shall be complied with if applicable to the infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 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.
- Contractors must provide manufacturers' certifications for all BABA compliant items to the responsible party before a request for reimbursement to the agency is made.

Bid Requirements

Advertisement for Bids

- This agreement is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget’s Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18,2022.

Instructions to Bidders

- Any request for substitute or “or equal” shall include the Manufacturer’s Certification of compliance with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58. If the Instructions include a Federal requirements section, include the following: BABAA requirements apply to this project.

Bid Form

- Bidder’s representation section: Bidder is familiar with all laws and regulations that may affect cost, progress, and performance of the work, including BABAA requirements.

Georgia Manufacturing Extension Partnership (GaMEP) at Georgia Tech

Connect with Your Local MEP Center

The Manufacturing Extension Partnership Program (MEP) is a national network with hundreds of specialists who understand the needs of America's small manufacturers. Our national network consists of manufacturing extension partnership centers located in all 50 states and Puerto Rico. MEP provides companies with services and access to public and private resources to enhance growth, improve productivity, reduce costs, and expand capacity.

Click on the state below to view and download a PDF of the MEP Center's one pager including contact information and economic impacts. You can also use the [interactive map](#) to find your local MEP Center, call (800) MEP-4MFG or view the [MEP Center quick list](#).

 ALABAMA	 ALASKA	 ARIZONA
 ARKANSAS	 CALIFORNIA	 COLORADO
 CONNECTICUT	 DELAWARE	 FLORIDA
 GEORGIA	 HAWAII	 IDAHO

- [Georgia Manufacturing Extension Partnership \(GaMEP\) at Georgia Tech | NIST](#)
- Offers supplier scouting for free

General Condition

- The following general condition has been added:
 - The Recipient, by signing these conditions, is certifying that it will comply with the requirements of the Build America, Buy America Act ("BABA" or "the Act") as enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IUA).Public Law 117-58. The Act establishes a domestic content procurement preference, the BAP, for Federal infrastructure programs. The Recipient must ensure that none of the funds made available for infrastructure projects may be obligated unless it has taken steps to ensure that the iron, steel, manufactured products, and construction materials used in a project are produced in the United States. The Act further defines a project to include "the construction, alteration, maintenance, or repair of infrastructure in the United States" and includes within the definition of infrastructure those items traditionally included along with buildings and real property. Thus, new awards of Federal Financial Assistance from a program for infrastructure, and any of those funds obligated by the grantee or Recipient, are covered under the BABA provisions of the Act, 41 U.S.C. 8301 note, unless covered by a waiver.

Special Condition

- The Recipient must submit for DCA's review and written approval a certification, signed by the chief elected official, stating the Recipient will adhere to the requirements of the The Build America, Buy America Act (BABA), enacted in the Infrastructure Investment and Jobs Act on November 15, 2021. BABA requires products purchased in connection with infrastructure projects funded by Federal financial assistance programs to be produced in the United States, known as the "Buy America Preference (BAP)". Specifically, this is a statutory requirement that Federal funding for infrastructure projects use "covered materials" that are "American-made." The BAP applies to the following products: Iron and steel; Manufactured products; and Construction materials. **For FY2024 awards, BAP will include Iron & Steel and Specifically Listed Construction Materials. Specifically Listed Construction materials consists of metals other than iron and steel (non-ferrous metals), lumber, composite building materials, and plastic and polymer-based pipe and tube (e.g., PVC pipe).**
- **For 2025 awards, BAP will include iron, steel, specifically listed construction materials, & manufactured products**
- **Housing Caveat**

The Recipient may certify each housing unit or individual project proposed for assistance will not exceed \$250,000 in federal assistance per HUD's *De Minimis*, Small Grants & Minor Components General Waiver.

Resources

- HUD Waivers
- https://www.hud.gov/program_offices/general_counsel/baba
- OMB Memo - Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure (M-22-11)
- <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>
- OMB proposed rule – Guidance for Grants & Agreements (add a new part 184 of 2 CFR and revise [2 CFR 200.322](#))
- <https://www.federalregister.gov/documents/2023/08/23/2023-17724/guidance-for-grants-and-agreements>
- HUD's BAP Checklist
- <https://files.hudexchange.info/resources/documents/Optional-Buy-America-Preference-Checklist.pdf>

Thanks!

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