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MADE IN AMERICA OFFICE

INFRASTRUCTURE INVESTMENT AND JOBS ACT: BUILD AMERICA, BUY AMERICA

IMPLEMENTATION GUIDANCE OVERVIEW

For Official Use Only

Review: Build America, Buy America Sourcing Requirements

BABA requires that the following conditions apply to federal financial assistance obligations for infrastructure made after May 14, 2022:

- for **iron and steel**, all manufacturing processes, from the initial melting stage forward, must occur in the United States
- for **manufactured products**, the final manufacturing process must occur in the United States and the cost of components mined, produced, or manufactured in the United States must be greater than 55 percent
- for **construction materials**, “all manufacturing processes must occur in the United States”—OMB has provided preliminary guidance
- waivers from these requirements must be in writing, published for public comment, and approved judiciously



OMB Priorities for BABA

- 1) **Buy More American-Made Items:** Use Build America, Buy America provisions to boost domestic manufacturing and good jobs (including union jobs), especially in critical sectors, by helping agencies to apply new Buy America requirements and establish waiver and waiver review policies that are strategic and effective at sending clear market signals
- 2) **Make It Easy:** Accomplish number one in the most efficient and practical way possible for agencies, award recipients, and OMB



Major Components of BABA Guidance

1. Federal Financial Assistance
2. Infrastructure
3. Waiver Principles and Criteria
4. Waiver Review Policies
5. Construction Materials



Federal Financial Assistance Program for Infrastructure

- Federal financial assistance means assistance that non-Federal entities receive or administer in the form of **grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans and loan guarantees.**
- A Federal financial assistance program for infrastructure is **any program under which an award may be issued for an infrastructure project,** regardless of whether infrastructure is the primary purpose of the award.
- **“Project”** means the construction, alteration, maintenance, or repair of infrastructure in the United States.
- The guidance includes sample language for agencies to include in NOFOs and Awards



Infrastructure

The guidance provides the following guardrails:

- applies to items that are “consumed in” or “permanently incorporated” in a project.
- does not apply to tools, equipment, and supplies brought to the construction site and removed at or before the completion of the project
- does not apply 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

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States:

- 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
- buildings and real property

The generation, transportation, and distribution of energy - including electric vehicle charging – is considered infrastructure. Private homes for personal use are not.



Waiver Principles and Criteria – Waiver Type

An agency may waive the application of a Buy America preference in any case where they find that:



- 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 (a “**nonavailability waiver**”); or
- the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “**unreasonable cost waiver**”).
- applying the domestic content procurement preference would be inconsistent with the public interest (a “**public interest waiver**”);



Waiver Principles and Criteria – Public Interest Waiver

For public interest waivers, the guidance provide examples:

- De Minimis Standards
- Small Grants
- Minor Components
- Urgent Matters
- Adjustment Period
- Other Considerations



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Waiver Principles and Criteria – General Guidance for Any Waiver

Federal agencies must be judicious in their use of waivers. They should use the following principles before issuing a waiver of any type:

- **Project- or Award-specific** whenever possible, and **time limited** when not possible
- **Targeted**: should not be more inclusive than necessary (for example: a particular manufactured product, not “all manufactured products”)
- **Conditional**: consider conditions on the waiver, when appropriate, that advance the goal of Buy America policies



Waiver Process Requirements

- Agencies must post waivers for at least **15 days for public comment** on the proposed waiver. General applicability waivers are subject to a minimum 30-day public comment period.
- Agencies **should consult with MIAO** prior to posting a waivers with broader applicability (e.g., program-level waiver)
- Agencies **must submit waivers to MIAO** for review after public comment to determine if it is consistent with policy
- MIAO, working with GSA, is planning interagency meetings to lay out options for public posting and centralized website



Waiver Process Requirements

- Agencies must begin applying BABA requirements, including Made in America conditions and a transparent waiver process, to funds no later than May 14, 2022
- The BuyAmerican.gov website is still being developed
- In the meantime, waivers should be posted to agencies' own websites, which shall be accessible via MadeInAmerica.gov
- Agencies with existing general applicability waivers that are more than five years old (except excluded product-specific waivers) must begin reviewing them by November 15, 2022



Construction Materials

- The standard for a Made in America construction material is “all manufacturing processes,” which in the case of iron and steel means everything but the raw material. This is an exacting standard.
- The guidance establishes a preliminary standard for construction materials: the last 2 manufacturing steps.

Preliminary list of construction materials comes from findings in BABA:

- 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



RFI on Construction Materials

- An RFI will be published this week seeking additional information, including:
 - Which materials should be considered construction materials?
 - How should “all manufacturing processes” apply to each type of construction material?
 - What is the current state of US manufacturing capacity for each type of material?



Key Takeaways of BABA Guidance

Buy America Preference

- Iron and Steel
- Manufactured Products
- Construction Materials (Preliminary guidance only)

Financial Assistance for Infrastructure

- Grants
- Cooperative agreements
- Non-cash contributions or donations of property
- Direct assistance
- Loans and loan guarantees

Waiver Types

- Nonavailability
- Unreasonable Cost
- Public Interest (e.g., de minimis standards, minor components)

Waiver Principles

- Judicious
- Limited by project, award, or time
- Targeted
- Conditional, where applicable

Waiver Process

- Agency consults with OMB (as appropriate)
- Agency publishes for public comment (15 days, 30 days for general applicability)
- Agency submits to MIAO for review

