

## Build America, Buy America (BABA) CDBG Requirements

### What is Build America, Buy America?

- 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.
- Infrastructure includes: Buildings and real property (including housing), utilities, water and sewer systems, electrical transmission facilities and systems, broadband infrastructure, transportation infrastructure.

### What is its applicability in CDBG projects?

The BAP is **now in effect for CDBG iron or steel projects** using funds obligated on or after November 15, 2022.

- The applicability of BAP is subject to HUD's Phased Implementation Waiver:
  - BAP will apply to "**Specifically Listed Construction Materials**" as of the date HUD obligates new federal financial assistance (FFA) from **FY24 appropriations**. Specifically listed construction materials include; Metals other than iron or steel (non-ferrous metals), lumber, composite building materials, plastic and polymer-based pipes/tubes
  - BAP will apply to all other **construction materials**, as of the date HUD obligates new federal financial assistance (FFA) from **FY25 appropriations**.
  - BAP will apply to **manufactured products**, as of the date HUD obligates new federal financial assistance (FFA) from **FY25 appropriations**.

### How can the country of origin be documented?

- Products delivered to the construction site must have a signed certification letter from the manufacturer.

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.

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- In addition to compliance documentation, a visual inspection of the product when it arrives to the project site, especially for iron and steel products which are often stamped with the country of origin.
- **Note: A country of origin stamp alone is not sufficient verification of compliance with BABA and assistance receipts should not rely on it to ensure compliance.**

### **Will contract language be added to include BABA requirements?**

- Architect/ Engineer contract should include 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.
- Construction Contract clause: 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.

### **Should bid documents include information about the BABA 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.

**More guidance will be forthcoming as HUD develops its project-specific waiver process for the following categories: public interest, nonavailability, and unreasonable cost.**