

BUILD AMERICA, BUY AMERICA ACT

IMPORTANT TERMS

Build America, Buy America Act (BABA) – enacted under division G, title IX, subtitle A, part I, sections 70911 - 70917 of the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117- 58)

Buy America Preference (BAP) – The requirements detailed in 2 CFR 184

Contractor – an entity which has entered into a Contract with a Subgrantee or Subrecipient

Contract – a legal instrument to purchase personal property or services to carry out a project or program

Subcontractor – an entity which has a contract with a Contractor, or other Subcontractor

Subgrantee – entity which receives an award of Federal funds from the Agency

Subrecipient – entity that receives a Subaward from the Agency to fund a program they have established

Pass-through Entity – non-Federal entity that provides a Subaward to a Subrecipient to carry out part the program

BABA'S PURPOSE

The purpose of BABA is to increase the use of American-made goods, services, products, and materials in federally funded infrastructure projects be produced in the United States.

WHAT IS THE BAP

The BAP establishes a need to document country of origin of articles, materials, and supplies consumed in, incorporated into, or permanently affixed to the Project's real property, or improvements to the real property. Each item shall fall into only one of the following categories:

- Iron and Steel
- Manufactured Product
- Construction Material
- Section 70917(c) Material
- Uncategorized

Categorization must be made based on the item's status at the time it is brought to the work site for incorporation into the project.

Section 70917(c) Materials and Uncategorized Materials

ARE NOT subject to the BAP

SECTION 70917(C) MATERIAL

Cement and cementitious materials; aggregates such as stone, sand or gravel; or aggregate binding agents or additives.

While a Section 70917(c) Material need not follow the BAP, a Manufactured Product made with 70917(c) Material(s) DOES need to follow the BAP.

(How was it brought to the site?)

For example, concrete is a 70917(c) Material, but a precast concrete wall is a Manufactured Product.

UNCATEGORIZED MATERIALS

Articles, materials, or supplies which do not fit within the definition of another categorization.

IRON AND STEEL

Articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

MANUFACTURED PRODUCT

Articles, materials, or supplies that have been processed into a specific form or shape, or combined with other articles, materials, or supplies to create a product with different properties than those individual articles, materials, or supplies.

CONSTRUCTION MATERIAL

Articles, materials, or supplies that consist of one of the following items:

- Non-ferrous metals
- Plastic & polymer-based products
- Glass
- Fiber optic cable (including drop cable)
- Optical fiber
- Lumber
- Drywall
- Engineered wood

HOW TO DOCUMENT?

NDHFA-provided BABA Certification

Category, Manufacturer/Vendor, Item/Product, Total Cost and Acceptable Documentation

As of Date (mm/dd/yyyy): <input type="text"/>					
Covered Material Category	Manufacturer / Vendor	Item / Product	Total Item / Product Cost	Documentation Attached	Foreign or Unknown
<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>

Copy of the label indicating the product was made in the United States; or

Copy of the product description or technical specifications that provides sufficient detail to conclude that the Covered Material complies with BABA and/or the BAP; or

Certificate or signed certification of from the manufacturer demonstrating the Covered Material complies with BABA and/or the BAP.

WAIVERS TO BABA OR THE BAP?

General Waivers

(available prior to November 23, 2027)

- Small Grant Waiver
- De Minimis Waiver
- Exigent Circumstances Waiver

Project-Specific Waivers

- Public Interest Waiver
- Nonavailability Waiver
- Unreasonable Cost Waiver

The Agency has implemented the De Minimis Waiver within the draw approval process.

Project-Specific waivers: Extremely rare, labor & time intensive, likely to exceed 6 weeks after submission. Agency must initiate request with Made in America Office at the Office of Management and Budget.

IMPLEMENTATION – PROCESS

<https://www.ndhfa.org/index.php/development/build-america-buy-america/>



Entity Profile
Package:

Complete at same
time as Contract
Execution



Contractor(s) &
Subcontractors gather
acceptable documentation
for all their Covered Materials



BABA Certification:

Provide as early as Contract
/ Entity Profile Package

Completed by each
Contractor

CONTACT INFORMATION



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