

CDBG Build America, Buy America (BABA) Act Clause

- A. The work to be performed under this contract is subject to the Build America, Buy America (BABA) Act requirements of the Infrastructure Investment and Jobs Act of 2021 (IIJA) (Pub. L. 117- 58, §§ 70901-70953). All iron, steel, manufactured products, and construction materials used in the project must be produced or manufactured in the United States, including all such materials installed by any subcontractors or suppliers for this project.
- B. The parties agree to comply with Office of Management and Budget (OMB) regulations in 2 CFR Chapter I, Part 184 and the related requirements in 2 CFR 200.322, which support implementation of BABA requirements for recipients of federal funds. The parties certify they are under no contractual or other impediment that would prevent them from complying.
- C. BABA requirements apply to all expenditures by a Federal agency to a non-federal entity for an infrastructure project. "Project" means the construction, alteration, maintenance, or repair of infrastructure in the United States. "Infrastructure" includes: 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 (including housing). The generation, transportation, and distribution of energy, including electric vehicle charging facilities, are considered infrastructure. Private homes for personal use do not constitute an infrastructure project. "Construction materials" includes generally all raw materials used in construction that is or consists primarily of: metals other than iron/steel (non-ferrous metals); plastic and polymer-based pipe and tube (e.g., PVC pipe); glass; lumber; or drywall.

BABA requirements do not apply to tools, equipment, and supplies brought to a construction site and removed at or before the completion of the project or to equipment and furnishings (such as chairs) used at or within the finished infrastructure project, but which are not an integral part of the structure or otherwise affixed to the project. For example, BABA requirements would apply to the funds used to construct a library, but not to funds used to buy books or furniture for the library.

- D. All agreements for professional services related to projects that are subject to the BABA requirements under Title IX of the IIJA. While professional services are not subject to BABA, Grantee understands that it is responsible for ensuring that, absent a waiver by the Housing and Urban Development (HUD), no iron, steel, manufactured products, or construction materials shall be used for the project unless such materials have been produced or manufactured in the United States.

Grantee shall obtain all necessary compliance certificates for work that is within Grantee's scope of work. Failure to do so shall be a default under this agreement. Guidance on complying with BABA is outlined by OMB's Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022.

- E. A Federal financial assistance program for infrastructure is a program in which funds are used for an infrastructure project, regardless of whether infrastructure is the primary purpose of an award. BABA requirements only apply to infrastructure portions of an award and apply even if Federal funds are not paying for the entire project.

- F. With the concurrence of the Made in America Office, HUD may waive the application of a Buy America preference if:
 - a. One or more iron or steel items, 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);
 - b. The inclusion of one or more iron or steel items, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (unreasonable cost waiver); or
 - c. 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 (a public interest waiver). Public interest waivers are the most flexible type of waiver, but, like all waivers, must be necessary and appropriately justified.

- G. Noncompliance may result in sanctions, repayment, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.