
This summary, provided by the [National Institute of Standards and Technology \(NIST\)](#), is not intended to replace or supersede the terms of the award. Where information in this guide differs from the terms of an award, the award terms shall prevail. Reference the award document or contact the Program Officer or Grants Specialist listed in the award document for any questions regarding a particular award.

Build America Buy America

The Build America Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act on November 15, 2021, established a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects on or after May 14, 2022. Guidance and other resources for BABA is available at the Office of Management and Budget (OMB) link below:

[Build America, Buy America Act – Federal Financial Assistance | OMB | The White House](#)

Since the enactment of BABA, OMB issued interim guidance under Memorandum M-22-11. OMB Memorandum M-22-11 applies to all fiscal year 2022 and 2023 extramural construction grants administered by NIST. *See* 2 C.F.R. § 184.2(b). The complete OMB memorandum is available at the link below.

<https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

As addressed in the Standard Terms and Conditions and in the kickoff meeting presentations, there are three construction product categories applicable under BABA. They are A. Iron and Steel (100% requirement), B. Manufactured Goods (55% requirement), and C. Construction Materials (all manufacturing processes). As noted in parenthesis, the requirements for each product category varies slightly, take care to apply the appropriate product category to the appropriate product. Your Program Office is available to assist with further understanding. A BABA preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to labor or to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a BABA preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used at or within the finished infrastructure project, but are not an integral part of or permanently affixed to the structure.

General Waivers

A recipient may request a waiver from the BABA preference for specific items to be incorporated into an infrastructure project. Waiver categories are A. Non-availability, B. Unreasonable Cost, and C. Public Interest. The waiver application process includes the submission of essential information based on the type of waiver being requested. Guidelines are available from the Federal Program Officer. Upon approval of the request, an Administrative Change Letter will be issued by the Grants Officer to the Recipient.

De Minimis Waiver

The “Department-wide Public Interest Waivers for De Minimis Infrastructure Project Purchases, Small Grants, and Minor Components within Iron and Steel Products” (De Minimis) waiver is posted in the Department of Commerce website under the link below.

<https://www.commerce.gov/sites/default/files/2023-05/De%20Minimis%20Waiver.pdf>

Take care in noting the 5% limit, up to a maximum of \$1M, is for “applicable project costs” where “Applicable project costs are defined for the purpose of this waiver as material costs subject to the Buy America preference.” In other words, construction labor, construction tools, and construction equipment (to which BABA does not apply) are not to be included in the base value of the calculation. An example calculation is below.

Example BABA DOC de minimis waiver calculation:

In the event of a \$10M construction project, where the recipient has determined that \$7.5M is BABA eligible, the recipient would calculate the maximum waiver value as such...

$$\$7,500,000 \times .05 = \$375,000$$

In this example, up to \$375,000 in non-BABA iron, steel, manufactured products, and construction materials may be utilized under the project.

Documentation will involve:

- a. Request to the Grants Officer and Federal Program Officer with a cost basis estimate of BABA qualified costs (\$7,500,000 in example above). As provided by a reputable source with ample project knowledge, e.g., expert staff, engineer, architect, cost consultant, or contractor.
- b. Administrative Change Letter issued by the Grants Officer (if waiver is approved)
- c. Record of the calculation above updated as necessary to address any significant variation over the course of the project.
- d. Record of the waived expenses, date of procurement, manufacturer, vendor, cost.
- e. Inclusion of above in the appropriate quarterly report(s), at the time of determination and the time of any updates.

Your Program Office is available to assist with further understanding.