



DEPARTMENT FOR
LOCAL GOVERNMENT

IMPLEMENTING
BUILD AMERICA,
BUY AMERICA
DOMESTIC PREFERENCE REQUIREMENTS

A DLG GUIDE FOR SUBRECIPIENTS

ISSUE DATE: FEBRUARY 2024

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1. INTRODUCTION

THE BUILD AMERICA, BUY AMERICA ACT

President Biden's [Bipartisan Infrastructure Law \(BIL\)](#) (Public Law No. 117-58), also known as the Infrastructure Investment and Jobs Act, was signed into law on November 15, 2021. This legislation includes the Build America, Buy America Act (BABA). BABA requires all agencies, including Department for Local Government (DLG), to ensure by May 14, 2022, that no federal financial assistance is provided for any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States *"unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States"*.

On April 18, 2022, the Office of Management and Budget (OMB) [issued a memo](#) that provided implementation guidance for agencies on the application of BABA to federal financial assistance programs for infrastructure and a transparent process to waive such preference, when necessary.

In accordance with the memo, DLG must ensure that all of its applicable federal financial assistance programs comply with [section 70914](#) of BABA. There are three key requirements that grantees, contractors, and subcontractors are required to follow for an infrastructure project (Appendix A).

1. **Domestic Preferences**
2. **Contract Language**
3. **Waivers**

2. DOMESTIC PREFERENCES

WHAT ITEMS ARE COVERED BY A DOMESTIC, OR “BUY AMERICA”, PREFERENCE?

Grantees, contractors, and subcontractors must ensure that all iron and steel, manufactured products, and construction materials used in their infrastructure projects are produced in the United States.

IRON AND STEEL

- Items that are predominantly iron or steel, unless another standard applies under law or regulation.
- All manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States.

MANUFACTURED PRODUCTS

- The manufactured product was manufactured in the United States.
- The cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following definitions:

- a. For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- b. For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

CONSTRUCTION MATERIALS

- All manufacturing processes for the construction material occurred in the United States. Construction materials means articles, materials, or supplies incorporated into an infrastructure project that consists of only one or more of the following materials. Each construction material is followed by a standard for the material to be considered “produced in the United States.”
 - Non-ferrous metals – All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.

- Plastic and polymer-based products (including PVC, composite building materials, and polymers used in fiber optic cables) – All manufacturing processes, from initial combination of constituent, plastic or polymer-based inputs until the item is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.
 - Composite building materials – All manufacturing processes, from initial combination of constituent materials until the composite material is in a form in which it is delivered to the work site and incorporated into the project, occurred in the United States.
 - Glass (including optic glass) – All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
 - Fiber optic cable – All manufacturing processes, from the initial preform fabrication stage through fiber stranding and jacketing, occurred in the United States.
 - Optical fiber – All manufacturing processes, from the initial preform fabrication stage through fiber stranding, occurred in the United States.
 - Lumber – All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.
 - Drywall – All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- Construction materials that are excluded from a Buy America preference:
 - Items made primarily of iron or steel
 - Manufactured products
 - Cement and cementitious materials
 - Aggregates such as stone, sand, or gravel
 - Aggregate binding agents or additives

WHEN DOES “BUY AMERICA” PREFERENCE APPLY?

A Buy America preference only applies to the iron and steel, manufactured products, and construction materials **used for the infrastructure project**. If DLG determines that no funds from a particular award will be used for infrastructure, a Buy America preference does not apply to that award.

Similarly, a Buy America preference **does not apply to non-infrastructure spending** under an award that also includes an infrastructure component. A Buy America preference applies to *an entire infrastructure project*, even if it is funded by both federal and non-federal funds under one or more awards.

A Buy America preference only applies to articles, materials, and supplies that are **consumed in, incorporated into, or affixed to an infrastructure project**. It does not apply 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.

It also does not apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used or within the finished infrastructure project **but are not part of or permanently affixed to the structure**.

EXEMPTIONS TO THE “BUY AMERICA” PREFERENCE?

The Buy America preference does not apply to expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.

“Pre and post disaster or emergency response expenditures” consist of expenditures for financial assistance that are:

- (1) Authorized by statutes other than the Stafford Act, 42 U.S.C. 5121 *et seq.*; and
- (2) Made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, 42 U.S.C. 5122(1), (2).

3. CONTRACT LANGUAGE AND CERTIFICATIONS

All contractor and subcontractor contracts under DLG financial assistance awards for infrastructure, must include a contract provision explaining the BABAA requirements and a self-certification where contractors can certify compliance with Buy America preference requirements outlined in Section 2 of this handbook.

REQUIRED CONTRACT LANGUAGE

Any contracts that may include a project for infrastructure, including subcontracts, shall include the following terms:

Buy America Domestic Procurement Preference:

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America 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 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 Buy America 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 the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.hud.gov/baba. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Waivers

When necessary, recipients may apply for, and the Department of Housing and Urban Development (HUD) may grant, a waiver from these requirements, subject to review by the Made in America Office. HUD may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the 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;
2. Unreasonable Cost Waiver: 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; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing HUD general applicability waiver as described at: https://www.hud.gov/program_offices/general_counsel/build_america_buy_america/waiver. If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to <https://www.madeinamerica.gov/waivers> and are subject to public comment periods of no less than 15 days.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DO Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America preference requirements. Include the name, cost, countries of origin (if known), and relevant [PSC](#) or [NAICS](#) code for each.
11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.

12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Approved waivers will be posted at <https://www.commerce.gov/oam/build-america-buy-america>; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer. Questions pertaining to waivers should be directed to the financial assistance awarding officer.

Definitions

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- composite building materials;
- glass (including optic glass);
- fiber optic cable;
- optical fiber;
- lumber; or
- drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“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; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Recipients of an award of Federal financial assistance must submit the “DLG-001 – Certificate of Compliance with Buy America” form, to the Department for Local Government. Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABA domestic preference requirement. Such disclosures shall be forwarded to the awarding entity who in turn will forward the disclosures to the Department for Local Government, the awarding agency.”

REQUIRED SELF-CERTIFICATIONS

For DLG financial assistance programs subject to BABA, contractors and subcontractors must sign and submit the “DLG-001 – Certificate of Compliance with Buy America” form, Figure 1. This form, which can also be found in Appendix B, shall be submitted with each payment request to the awarding entity.

In addition, subrecipients must sign and submit their own certification form, “DLG-003 – Subrecipient Report of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts”, Figure 2. This form, which can be found in Appendix C, shall also be submitted with each payment request to the awarding entity.

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA

Prime Contractors should complete and sign a copy of this form and submit with each payment request to the Department for Local Government. Prime contractors must also attach receipts and/or other documentation with this form showing evidence of Buy America compliance.

CONTRACTOR NAME			
CONTRACTOR ADDRESS			
PROJECT NAME			
INVOICE PERIOD		TO	
CONTRACT NUMBER			
CONTRACT AMOUNT			

This certification is to be utilized by prime contractors and subcontractors who have been awarded contracts funded through Community Development Block Grant (CDBG) and/or Appalachian Regional Commission (ARC) Funds and subject to the Buy America provisions of the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58). Buy America provisions state:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.
- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

MATERIALS/MANUFACTURED GOOD(S) BEING USED FOR PROJECT (Please List)

TYPE OF GOOD	MAKE & MODEL	MANUFACTURING LOCATION

The first page of the DLG-001 form contains information related to the project and invoice period.

It also requires a listing of materials/ manufactured goods that were used for the invoicing period.

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA

I hereby certify that all of the iron, steel and manufactured goods supplied or provided by our company for use on this project was produced in the United State of America, unless an applicable waiver applies.

Or

I am relying on the following Buy America waiver(s) (check all that apply):

- De Minimis Waiver*
Iron, steel and manufactured goods supplied/provided by our company equal no more than 5 percent of the total cost of the iron, steel and manufactured goods used in and incorporated into this project.
- Small Grants Waiver*
The total cost of the award/subaward is less than \$250,000 and is not subject to the provisions of Buy America.

Representative Name Title

Representative Signature Date

The second page of the DLG-001 form contains language for certifying compliance and signature area.

Figure 1

**SUBRECIPIENT REPORT OF COMPLIANCE
WITH BUILD AMERICA, BUY AMERICA PROVISIONS
FOR FEDERALLY ASSISTED CONTRACTS**

This form is to be submitted with each request for reimbursement of funding by the subrecipient and as requested by Department for Local Government during the project.

SUBRECIPIENT NAME:	
CONTRACT NUMBER:	
PROJECT DESCRIPTION:	
BILLING PERIOD:	TO

Subrecipient Statement:

I confirm to the best of my knowledge and belief that we are in compliance with the requirements of Pub. L. No 117-58, Sects 70901-525 as referenced in the following requirements of the Build America, Buy America Act (BABA) and the grant agreement between the Department of Interior (DOI) and the Commonwealth of Kentucky.

Signature (Subrecipient Representative)

Title

Date

The Build America, Buy America Act, enacted under Division G, Title IX of the Infrastructure Investment and Jobs Act (IIJA), applies a domestic content procurement preference requirement (Buy America Requirement) to federally funded public "infrastructure projects". Per Section 70914 of the IIJA funds may not be obligated for an "infrastructure project" unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States or an applicable a waiver to the domestic content procurement preference requirement is used.

Subrecipient Responsibility

The subrecipient is responsible for ensuring the Buy America Requirement flows down to all contracts, subcontracts, and purchase orders for work performed under the proposed infrastructure project. Subrecipients of awards containing the Buy America Requirement must ensure that absent a waiver none of the funds provided under their award may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The first page of the DLG-003 form contains information related to the project and invoice period and signature area.

Language for certifying compliance.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Compliance Verification

Buy America requirements must flow down to all contracts, subcontracts and purchase orders for work performed under the infrastructure project; therefore, subrecipients must maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States.

The Certification of Compliance form(s) (Form DLG-001) must be provided by contractor and subcontractors from the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all contractors and subcontractors to the subrecipient.

Subrecipients must keep these certifications with the award/project files and be able to produce upon request from Department of Interior, Department for Local Government, auditors or Office of Inspector General. Copies of the Certificate of Compliance with Buy America Form (Form DLG-001) may be requested from Department for Local Government (DLG).

The second page contains more compliance certification language.

MANUFACTURER CERTIFICATIONS

As an additional step to ensure compliance when purchasing products for the project, DLG award recipients or subrecipients may request a certification letter from the product manufacturer to demonstrate compliance with BABA requirements. Although requesting manufacturer certifications is not required, DLG recommends this step as a best practice for documenting compliance with BABA. DLG recommends that certification letters contain five essential elements, which include:

- A reference to the project;
- Specific product information;
- Compliance with BABA reference;
- Location of manufacturer (country); and
- A company representative signature.

The certification letter should be maintained as part of the project record to be made available to DLG if requested. Below are examples of two types of manufacturer certifications: Step Certification and Final Certification.

Step Certification

A step certification is a type of certification process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the subject products and materials certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of subject products and materials. Figure 3 gives an example of language to include in a step certification letter.

SAMPLE STEP CERTIFICATION LETTER:

Company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Step Certification for Project (XXXXXXXXXX)

I, (**company representative**), certify the (**melting, bending, coating, galvanizing, cutting, etc.**) process for (**manufacturing or fabricating**) the following products and/or materials shipped or provided for the subject project is in full compliance with the Build America, Buy America Act (BABA) requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location: _____.

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative

Figure 3

Final Certification

Although obtaining step certification is a best practice, if not possible, DLG award recipients and subrecipients may consider requesting a final manufacturer certification letter. For a final certification letter, the final manufacturer that delivers the product to the worksite, vendor, or contractor provides a certification asserting that all manufacturing processes occurred in the United States. While this type of certification may be acceptable, it may not provide the same degree of assurance, and therefore additional documentation may be needed if the certification is lacking important information. Sample final certification language is included below. Figure 4 gives an example of language to include in a step certification letter.

SAMPLE FINAL CERTIFICATION LETTER:

Company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project (XXXXXXXXXX)

I, (**company representative**), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the Build America, Buy America Act (BABA) requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location: _____.

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative

Figure 4

4. WAIVERS

Per section 70914(c) of BABA, the Department of Housing and Urban Development (HUD) has the authority to waive the Buy America Preference when: (1) applying the requirement is inconsistent with the public interest (a “public interest waiver”); (2) 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 (3) 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% (an “unreasonable cost waiver”). If a project cannot comply with the Buy American Preference requirements, recipients and subrecipients must seek a waiver from HUD. There are two categories of waivers: General Applicability Waivers and Project Specific Waivers.

GENERAL APPLICABILITY WAIVERS

The term “general applicability waiver” refers to a waiver that applies generally across multiple awards. A general applicability waiver can be “product-specific” (e.g., applies only to a product or category of products) or “non-product specific” (e.g., applies to all “manufactured products”). Award recipients subject to Buy American Preference may use general applicability waivers and do not require a separate application or approval by HUD and MIAO prior to use. These may cover categories of products known to be unavailable domestically or are intended to ease the burden of compliance.

To date, HUD has approved two General Applicability Waivers:

1. **De Minimis Purchases Waiver** – This waiver is critical to ensure that infrastructure project purchases below a de minimis threshold funded through financial assistance agreements sustain progress while reducing the burden on recipients.

This waiver covers infrastructure project purchases, totaling up to 5 percent of the total applicable project costs, up to a maximum of \$1,000,000.00. Applicable project costs are defined as material costs subject to the Buy America preference.

This waiver, which can be found in Appendix D, was approved by DOI on February 21, 2023 and expires on February 20, 2028.

2. **Small Grant Waiver** – This waiver is critical to ensure that agency small infrastructure projects conducted through small grants sustain progress and reduce the burden on recipients, many of whom are small organizations operating in rural or disadvantaged communities.

This waiver permits the use of non-domestic iron, steel, manufactured products, and construction materials in such projects that may otherwise be prohibited under section 70914(a) during the specified period of time for small grants that meet the following standard:

- The total award amount does not exceed the Simplified Acquisition Threshold of currently \$250,000.00;
- The award amount is not anticipated to exceed the Simplified Acquisition Threshold for the life of the grant.

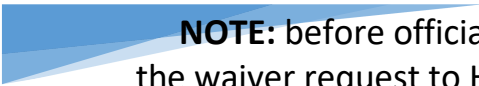
PROJECT-SPECIFIC WAIVERS

Project-specific waivers are for the use of a specified non-domestic product for a single project. An assistance recipient may request a waiver from DLG through their DLG grant representative. **HUD must approve waiver requests before a HUD funded project can permanently incorporate a non-domestic product.** Due to waiver requests being both project- and product-specific, any other assistance recipient who wishes to use a waiver for a similar product must apply for a separate waiver based on specific project circumstances.

WAIVER SUBMISSION

First, check the HUD [General Waivers and Timeline](#) website to determine if your project or materials meet the criteria of one of the already approved HUD-wide waivers. If the criteria are met, a separate waiver is not required.

If your project or materials do not meet the general applicability waiver criteria or an approved Buy America waiver, you may submit a waiver request directly to DLG, then HUD. The waiver request justification should include a detailed justification for the use of goods, products, or materials mined,



NOTE: before officially submitting the waiver request to HUD, it should be submitted to DLG for their agreement.

produced, or manufactured outside the United States and a certification that a good faith effort was made to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers. To assist HUD with processing your request, note that the below information must be included (as applicable) on your waiver request. You may contact DLG for assistance with items 3 thru 7.

1. Type of waiver requested (public interest, non-availability, or unreasonable cost).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award).
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DO Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant [PSC](#) or [NAICS](#) code for each.

11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Entities applying for a waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver requests.

WAIVER APPROVAL

If HUD determines that your waiver request (in whole or in part) appears to meet the legal and policy criteria of Buy America, and in accordance with Section 70914 (c), HUD will post its proposed waiver justification for public comment for a period of not less than 15 days to the MIAO [Waivers](#) page.

Before finalizing a waiver, HUD must submit the waiver determination to the Office of Management and Budget Made in America Office (MIAO) for final review pursuant to Executive Order 14005 and sections 70923(b)(2) and 70937 of the Infrastructure Investment and Jobs Act. After final review, the waivers of general applicability are subject to a minimum 30-day public comment period.

HUD will post approved waivers on the MIAO [Waivers](#) page, and DLG will notify you if your waiver request was approved.

5. COMPLIANCE OVERSIGHT

SUBRECIPIENT COMPLIANCE RESPONSIBILITIES

Subrecipients bear much of the responsibility for ensuring compliance with BABA. Furthermore, subrecipients have a vested interest in ensuring that BABA compliance is met. If the contractor is not following BABA, this may mean that the subrecipient's valuable funds are being used improperly.

The following tasks make up the subrecipient's BABA compliance oversight role and may be performed by the subrecipient or by a designated representative such as a consultant:

- Include BABA language in construction contract(s)
- Verify required BABA certifications
- Check manufacturer certifications, if applicable

INCLUDING BABA LANGUAGE

Subrecipients are responsible for including the BABA provisions language, page 5 through page 7, into all construction contracts, as well as language that requires contractors to include BABA provisions in subcontracts.

VERIFYING CERTIFICATIONS

When a contractor/subcontractor submits a request for payment, they are required to self-certify that all material or manufactured goods for the billing period complies with Buy America, page 8. Subrecipients are responsible for reviewing the DLG-001 self-certification report, Figure 1, for accuracy.

Subrecipients are responsible for ensuring the first page of the form is completely filled out and all materials or manufactured goods being requested for reimbursement are listed on the form. The second page must have at least one of the check boxes marked and signed by the contractor/subcontractor authorized representative.

In addition to the DLG-001 form, subrecipients must themselves self-certify that all material or manufactured goods for the billing period complies with Buy America, page 8. Subrecipients are responsible for completing the DLG-003 self-certification report, Figure 2. Subrecipients should ensure the first page of the form is completely filled out and signed by an authorized representative.

CHECKING MANUFACTURER CERTIFICATIONS

While this step is not required, it is recommended as an extra level of compliance. If applicable, subrecipients are responsible for obtaining a manufacturer certification letter, page 11, from the contractor/subcontractor.

Subrecipients are responsible for ensuring that the language similar to the examples in Figure 3 and Figure 4 is contained in the certification; but at a minimum, the form must contain a reference to the law, a list of materials/items, the city and state where the materials/items were manufactured, and a signature from the manufacturer's representative.

PROCESSING WAIVERS

A contractor/subcontractor or subrecipient may wish to submit a waiver for certain materials or manufactured goods, page 14. If applicable, the subrecipient or contractor/subcontractor are responsible for developing the waiver, with assistance from DLG. It will be the subrecipients or contractors/subcontractors responsibility to file the waiver with DOI; however, before officially submitting the waiver request to HUD and then to DOI, it should be submitted to DLG for their agreement.

6. DOCUMENTS AND FORMS TO BE SUBMITTED TO DLG

- **REQUEST FOR PAYMENT**

Requests for payment shall be submitted monthly, without exception, to either Jennifer Peters at jennifer.peters@ky.gov or Mark Williams at markp.williams@ky.gov or Cole Sutton at colec.sutton@ky.gov. This will include the need to submit a \$0 request if no payment is needed. Below are supplemental documents, for Buy America compliance, that are to accompany requests for payments.

- **MONTHLY REPORT**

Submit a monthly report detailing the work performed during the billing period.

- **CONTRACTOR/SUBCONTRACTOR REPORT OF COMPLIANCE**

Submit the “DLG-001 – Certificate of Compliance with Buy America” form (Appendix B) to certify Buy America compliance.

- **SUBRECIPIENT REPORT OF COMPLIANCE**

Submit the “DLG-003 – Subrecipient Report of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form (Appendix C) to certify Buy America compliance.

- **MANUFACTURER CERTIFICATIONS**

If applicable and if requested, submit the certifications (page 18) to either Jennifer Peters at jennifer.peters@ky.gov or Christy Ritchie at christy.ritchie@ky.gov.

- **WAIVERS**

If applicable, submit waiver requests (page 18) to HUD and then DOI; however, before officially submitting the waiver to HUD and then DOI, submit a copy to either Jennifer Peters at jennifer.peters@ky.gov or Christy Ritchie at christy.ritchie@ky.gov for their agreement.

You may find it useful to use the Build America, Buy America Act Compliance Checklist for Subrecipients (Appendix F) as a tool to insure proper and timely document submission.

7. SUMMARY

If you have never administered a project with BABA requirements, it can be overwhelming at first. This handbook was developed to familiarize and assist you with these requirements.

It is recommended you read this handbook several times and study the figures/appendices. Everything you need to succeed is in this handbook.

However, even the greatest of guidance document will not make you an expert on the subject; that takes practice and repetition. That is why you should feel free to reach out to us if you have any questions, concerns, or need further clarification.

- For BABA specific questions, you may contact Jennifer Peters at jennifer.peters@ky.gov or by calling (502) 892-3469 or Christy Ritchie at christy.ritchie@ky.gov or by calling (502) 892-3580.
- For questions related to the project itself, you may contact either Jennifer Peters at jennifer.peters@ky.gov or by calling (502) 892-3469 or Christy Ritchie at christy.ritchie@ky.gov or by calling (502) 892-3580.

8. APPENDICES

APPENDIX A

THREE KEY REQUIREMENTS FLYER

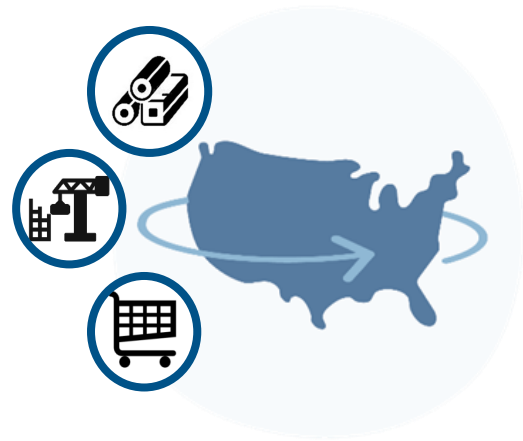
Build America, Buy America Act

Three Key Requirements

The Build America, Buy America Act (BABA) requires recipients and subrecipients of certain financial assistance programs to follow three key requirements for their infrastructure projects:

1. Domestic Preferences

Recipients and subrecipients must ensure that all iron and steel, manufactured products, and construction materials used in their infrastructure projects are produced in the United States.



2. Contract Language

Contracts must include a contract provision explaining the BABA requirements and a self-certification of compliance with the domestic preference requirements. Consult the BABA Handbook for more information and sample language.

3. Waivers

Recipients and subrecipients may request a waiver from OSMRE if the circumstances meet the criteria for an allowable waiver type. The allowable waiver types include nonavailability, unreasonable cost, and public interest. Follow the steps and checklist outlined in the BABA Handbook to ensure timely review of the waiver request.



APPENDIX B

FORM DLG-001

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA



**OFFICE OF THE GOVERNOR
DEPARTMENT FOR LOCAL GOVERNMENT**

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA

I hereby certify that all of the iron, steel and manufactured goods supplied or provided by our company for use on this project was produced in the United State of America, unless an applicable waiver applies.

Or

I am relying on the following Buy America waiver(s) (check all that apply):

De Minimis Waiver
Iron, steel and manufactured goods supplied/provided by our company equal no more than 5 percent of the total cost of the iron, steel and manufactured goods used in and incorporated into this project.

Small Grants Waiver
The total cost of the award/subaward is less than \$250,000 and is not subject to the provisions of Buy America.

Representative Name

Title

Representative Signature

Date

APPENDIX C

FORM DLG-003

**SUBRECIPIENT REPORT OF COMPLIANCE
WITH BUILD AMERICA, BUY AMERICA PROVISIONS
FOR FEDERALLY ASSISTED CONTRACTS**

**SUBRECIPIENT REPORT OF COMPLIANCE
WITH BUILD AMERICA, BUY AMERICA PROVISIONS
FOR FEDERALLY ASSISTED CONTRACTS**

This form is to be submitted with each request for reimbursement of funding by the subrecipient and as requested by Department for Local Government during the project.

SUBRECIPIENT NAME:	
CONTRACT NUMBER:	
PROJECT DESCRIPTION:	
BILLING PERIOD:	TO

Subrecipient Statement:

I confirm to the best of my knowledge and belief that we are in compliance with the requirements of Pub. L. No 117-58, Sects 70901-525 as referenced in the following requirements of the Build America, Buy America Act (BABA) and the grant agreement between the Department of Interior (DOI) and the Commonwealth of Kentucky.

Signature (*Subrecipient Representative*)

Title

Date

The Build America, Buy America Act, enacted under Division G, Title IX of the Infrastructure Investment and Jobs Act (IIJA), applies a domestic content procurement preference requirement (Buy America Requirement) to federally funded public “infrastructure projects”. Per Section 70914 of the IIJA funds may not be obligated for an “infrastructure project” unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States or an applicable a waiver to the domestic content procurement preference requirement is used.

Subrecipient Responsibility

The subrecipient is responsible for ensuring the Buy America Requirement flows down to all contracts, subcontracts, and purchase orders for work performed under the proposed infrastructure project. Subrecipients of awards containing the Buy America Requirement must ensure that absent a waiver none of the funds provided under their award may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Compliance Verification

Buy America requirements must flow down to all contracts, subcontracts and purchase orders for work performed under the infrastructure project; therefore, subrecipients must maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States.

The Certification of Compliance form(s) (Form DLG-001) must be provided by contractor and subcontractors from the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all contractors and subcontractors to the subrecipient.

Subrecipients must keep these certifications with the award/project files and be able to produce upon request from Department of Interior, Department for Local Government, auditors or Office of Inspector General. Copies of the Certificate of Compliance with Buy America Form (Form DLG-001) may be requested from Department for Local Government.

APPENDIX D

BABA COMPLIANCE CHECKLIST

DEPARTMENT FOR LOCAL GOVERNMENT
BUILD AMERICA, BUY AMERICA ACT COMPLIANCE CHECKLIST FOR SUBRECIPIENTS



**DEPARTMENT FOR LOCAL GOVERNMENT
BUILD AMERICA, BUY AMERICA ACT COMPLIANCE CHECKLIST
FOR SUBRECIPIENTS**

Bipartisan Infrastructure Law (BIL) funds used for transactions involving contracts for any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States must comply with the Build America, Buy America Act (BABA). This checklist provides an overview of the requirements established by BABA, and is not a substitute for the detailed provisions in the U.S. Department of Labor (DOL) regulations implementing Buy America requirements. Subrecipients should keep the completed checklist for their records, but do not need to submit it to the Department for Local Government.

CONTRACTOR/SUBCONTRACTOR:	
AWARD NUMBER:	
PROJECT TITLE:	
DATE:	

QUESTION	EXPLANATION/INSTRUCTION	STATUS		
		YES	NO	N/A
INCLUSION OF BABA LANGUAGE				
1. Was the BABA language included in all contracts and/or purchase orders?	You must incorporate the federal BABA language in all construction contracts and purchase orders for projects using funds from the Bipartisan Infrastructure Law (BIL).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Did the contractor include the BABA language in all subcontracts and/or purchase orders?	<p>You must ensure that that your contractor incorporated the federal BABA language in all subcontracts and purchase orders for projects using funds from the Bipartisan Infrastructure Law (BIL).</p> <p>While it is not required, it is recommended you request the contractor to submit copies of their subcontracts and purchase orders so you may verify the correct language was included.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

VERIFICATION OF MANUFACTURER CERTIFICATIONS				
3. Has the contractor and their subcontractors obtained manufacturer certifications for material and product purchases?	<p>Although obtaining manufacturer certifications is not required, it is recommended as a best practice for documenting compliance with BABA.</p> <p>In addition, if your contractor and their subcontractors have obtained manufacturer certifications, it is recommended, but not required, that you ensure all applicable language was contained in the certifications.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PROCESSING OF WAIVERS				
4. Was the waiver submitted to DLG?	<p>Whether you or the contractor/subcontractor is seeking the waiver, it must first be submitted to DLG for their agreement.</p> <p>After receiving DLG's agreement of the waiver, yDLG will submit the waiver to HUD and then on to MIAO.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
REQUEST FOR PAYMENT				
5. Are requests for payment being submitted on a monthly basis?	Requests for payment are required to be submitted monthly, without exception.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. If no work was performed during a monthly pay period, was a \$0 request submitted?	Since requests for payment must be submitted monthly, if no payment is needed a \$0 pay request must be submitted.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Was a monthly report included with the request for payment?	A monthly report detailing the work performed during the billing period must be submitted with each request for payment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Was the "DLG-001 – Certification of Compliance with Buy America" form submitted by the contractor and their subcontractors?	This form must be submitted by the contractor and their subcontractors when they are requesting payment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Was the "DLG-003 – Subrecipient Report of Compliance with Buy America Provisions for Federally Assisted Contracts" form included in the request for payment?	This form must be submitted by you for all requests for payment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

