

Build American, Buy American Quick Guide

Introduction

Build American, Buy American (BABA) is a preference under the regulation 2 CFR part 184, to include American made products in federally funded infrastructure projects. BABA is also known as the Buy American Preference or BAP.

Each County funded project must document the applicability, use of any waivers, and compliance with the regulations. The County utilizes the **HUD Buy America Preference Checklist** for each project file. Each Funding Recipient should have a copy of the completed form for their records.

Projects with a private “quality” are not subject to BABA. As a result, projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute a public infrastructure project for purposes of BABA.

A 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.

Definitions

Project means the construction, alteration, maintenance, or repair of infrastructure in the United States. HUD defines a “project” using the same term under the Environmental Review or NEPA rules. Projects cannot be artificially subdivided to reduce the total cost of a project for purposes of applying HUD’s small grants waiver.

Infrastructure includes the structures, facilities, and equipment for projects traditionally considered infrastructure, including buildings and real property. This may include, but is not limited to, certain funding for:

- road and sidewalk improvement projects.
- water, sewer, and other utility projects.
- broadband infrastructure.
- housing construction and rehabilitation.
- community facility construction and rehabilitation.
- homeless shelter construction and rehabilitation; and,

- other Community Planning Development (CPD)-funded activities that are defined as infrastructure according to BABA (section 70912(5)).

Covered Materials and Requirements for US Production

Iron and Steel - In the case of iron or steel products, all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the US.

Construction Materials - In the case of construction materials, all manufacturing processes for the construction material occurred in the US. Below is a link to the materials defined by BABA as construction materials. <https://www.hudexchange.info/faqs/4260/what-is-a-construction-material/>

Manufactured Products - In the case of manufactured products that:

- The product was manufactured in the United States; and
- The cost of components of the manufactured product that are mined, produced, or manufactured in the US is greater than 55 percent of the total cost of all components of the manufactured product.

Below is a link to the materials defined by BABA as manufactured products.

<https://www.hudexchange.info/faqs/4261/what-is-a-manufactured-product/>

Documenting Compliance

1. Use BABA specific language in all bidding documents and contracts with contractors and subcontractors.
2. Document products utilized in the project are manufactured in the US, called a Materials Certification. The County will require the use of the **HUD Buy America Preference Certification** form.
 - This can be electronic or paper.
 - Contractors must include documentation from the manufacturer of the products to verify US production. Contractors may select one of the following attachments for each product utilized:
 - A copy of the label indicating the product was made in the US
 - A copy of the product description or technical specifications that provides sufficient detail to conclude that the Covered Materials comply with BABA;or,

- A certificate or other documentation from the manufacturer demonstrating that the Covered Materials comply with BABA.

Waivers

The County may utilize a general waiver and relief to the BABA regulation for projects meeting certain requirements. The following are general waivers available until November 23, 2027.

1. **Nonavailability waiver:** Types of iron, steel, manufactured product 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 (25%):** Inclusion of those products and materials will increase the cost of the overall project by more than 25 percent.
3. **Public interest waiver:** Applying the domestic content procurement preference would be inconsistent with the public interest.

The County may also select to apply for a **Project Specific Waiver**. Project Specific Waivers do not expire; however, they do require approval from the Washington HUD office prior to beginning the project. Requirements for a Project Specific Waiver include:

- Ensure the project does not qualify for relief under a general waiver listed above.
- The necessary market research to support the need for the waiver has been documented – including use of the local Manufacturing Extension Partnership (MEP) Center’s supplier scouting process.
- This process can take months as it requires multiple layers of approval by agencies in Washington DC, and **no project activity can take place prior to receiving the waiver.**

Note: Only the County may apply for a Project Specific Waiver.

References

- HUD Exchange - <https://www.hudexchange.info/programs/baba/>
- BABA CPD Memo (2025-01) - <https://www.hud.gov/sites/dfiles/OCHCO/documents/cpd-25-01.pdf>

The [National Institute of Standards and Technology \(NIST\) Manufacturing Extension Partnership \(MEP\)](#) provides a supplier scouting service that grantees, subrecipients, and contractors may use to conduct market research and identify manufacturers who can meet demand for American made products.