Welcome!

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There will be no audio sound until the session begins.
Zoom Webinar Reminders

- Zoom technical support at 1-888-799-9666, option 2
- Audio streamed through your speakers
- Submit questions at any time in the Q&A box at the bottom of your screen. We will be answering questions at the end of the session.
- Webinar recording, slides, and session summaries posted shortly after the event at thefdp.org

*If you are a member of the press, please identify yourself and your publication in the Q&A box.*
MADE IN AMERICA OFFICE

INFRASTRUCTURE INVESTMENT AND JOBS ACT: BUILD AMERICA, BUY AMERICA

IMPLEMENTATION GUIDANCE OVERVIEW
BABA requires that the following conditions apply to federal financial assistance obligations for infrastructure made after May 14, 2022:

- for **iron and steel**, all manufacturing processes, from the initial melting stage forward, must occur in the United States

- for **manufactured products**, the final manufacturing process must occur in the United States and the cost of components mined, produced, or manufactured in the United States must be greater than 55 percent

- for **construction materials**, “all manufacturing processes must occur in the United States”—OMB has provided preliminary guidance

- waivers from these requirements must be in writing, published for public comment, and approved judiciously
OMB Priorities for BABA

1) **Buy More American-Made Items:** Use Build America, Buy America provisions to boost domestic manufacturing and good jobs by helping agencies to apply new Buy America requirements and establish waiver and waiver review policies that are strategic and effective at sending clear market signals.

2) **Make It Easy:** Accomplish number one in the most efficient and practical way possible for agencies, award recipients, and OMB.
Major Components of BABA Guidance

1. Federal Financial Assistance
2. Infrastructure
3. Waiver Principles and Criteria
4. Waiver Review Policies
5. Construction Materials
Federal Financial Assistance Program for Infrastructure

• Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, cooperative agreements, non-cash contributions or donations of property, direct assistance, loans and loan guarantees.

• A Federal financial assistance program for infrastructure is any program under which an award may be issued for an infrastructure project, regardless of whether infrastructure is the primary purpose of the award.

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

• The guidance includes sample language for agencies to include in NOFOs and Awards
Infrastructure

The guidance provides the following guardrails:

• applies to items that are “consumed in” or "permanently incorporated" in a project.

• does not apply to tools, equipment, and supplies brought to the construction site and removed at or before the completion of the project.

• does not apply to equipment and furnishings used at or within the finished infrastructure project, but which are not an integral part of the structure or otherwise affixed to the project.

“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
• buildings and real property

The generation, transportation, and distribution of energy - including electric vehicle charging – is considered infrastructure. Private homes for personal use are not.
Waiver Principles and Criteria – Waiver Type

An agency may waive the application of a Buy America preference if it finds that:

- 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

- 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 (an “unreasonable cost waiver”).

- applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
Waiver Principles and Criteria – Public Interest Waiver

For **public interest waivers**, the guidance provide examples:

- De Minimis Standards
- Small Grants
- Minor Components
- Urgent Matters
- Adjustment Period
- Other Considerations
Federal agencies must be judicious in their use of waivers. They should use the following principles before issuing a waiver of any type:

- **Project- or Award-specific** whenever possible, and **time limited** when not possible
- **Targeted**: should not be more inclusive than necessary (for example: a particular manufactured product, not “all manufactured products”)
- **Conditional**: consider conditions on the waiver, when appropriate, that advance the goal of Buy America policies
Waiver Process Requirements

• Agencies must post waivers for at least **15 days for public comment**.
• Agencies **should consult with MIAO** prior to posting a waiver with broader applicability (e.g., program-level waivers)
• Agencies **must submit waivers to MIAO** for review after public comment to determine if it is consistent with policy
Waiver Process Requirements

• Agencies must begin applying BABA requirements, including Made in America conditions and a transparent waiver process, to funds no later than May 14, 2022.

• The BuyAmerican.gov/MadeInAmerica.gov website is still being developed as a centralized resource.

• Agencies with existing general applicability waivers that are more than five years old (except excluded product-specific waivers) must begin reviewing them by November 15, 2022.
The standard for a Made in America construction material is “all manufacturing processes,” which in the case of iron and steel means everything but the raw material. This is an exacting standard.

The guidance establishes a preliminary standard for construction materials: the last 2 manufacturing steps.

Preliminary list of construction materials comes from findings in BABA:
- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; and
- drywall
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<td>• Agency submits to MIAO for</td>
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Key Resources

- www.madeinamerica.gov
- www.whitehouse.gov/omb/management/made-in-america
Build America, Buy America: National Science Foundation Implementation

Patrick Breen
Chief Acquisition Officer and
Division Director, Acquisition and Cooperative Support
Content

How did NSF Implement BABA?
• Notice of Funding Opportunity
• Term and Condition
• Website
• Waiver Process
Build America, Buy America NOFO

Administrative and National Policy Requirements
Build America, Buy America

As expressed in Executive Order 14005, Ensuring the Future is Made in All of America by All of America’s Workers (86 FR 7475), it is the policy of the executive branch to use terms and conditions of Federal financial assistance awards to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States.

Consistent with the requirements of the Build America, Buy America Act (Pub. L. 117-58, Division G, Title IX, Subtitle A, November 15, 2021), no funding made available through this funding opportunity may be obligated for an award unless all iron, steel, manufactured products, and construction materials used in the project are produced in the United States. For additional information, visit NSF’s Build America, Buy America webpage.
What are NSF’s Domestic Preference Terms?

Article 45. Domestic Preferences for Procurements
Article 46. Made in America
Article 47. Build America, Buy America
Article 45. Domestic Preference for Procurements

The awardee is notified of the applicability of 2 CFR §200.322, entitled Domestic Preferences for Procurements.
Article 46. Made in America

In implementation of 2 CFR §200.322, all Research Infrastructure awards must retain appropriate documentation to substantiate any circumstance where the awardee has deemed a U.S. preference not feasible in acquiring goods, products, or materials. The documentation must identify the basis for the determination and be based on:

a. Domestic non-availability – articles, materials, or supplies are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities and of a satisfactory quality to meet technical or operational requirements;
b. Unreasonable cost – the price of the domestic end product (including transport to the construction site) is higher than the price of a foreign end product by 30 percent if offered by a small business or 20 percent if offered by other than a small business;
c. The purchase is related to commercially-available information technology; and/or
d. The purchases are at or below the micro-purchase threshold (currently $10,000 for most acquisitions) or related to procurements for use outside of the United States. The requirements of this article must be included in all subawards, contracts and purchase orders for work or products under this award.
Article 47. Build America, Buy America

a. The awardee is subject to the Buy America Sourcing requirements under the Build America, Buy America provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§ 70911-70917) when using Federal funds for the purchase of goods, products, and materials on any form of construction, alteration, maintenance, or repair of infrastructure in the United States regardless of the appropriation.

These sourcing requirements require that all iron, steel, manufactured products, and construction materials used in Federally funded infrastructure projects must be produced in the United States. The awardee must implement these requirements in its procurements and this article must flow down to all subawards and contracts at any tier. For legal definitions and sourcing requirements, the awardee must consult NSF’s Implementation of the Act on the Build America, Buy America website.

b. When supported by rationale provided in IIJA §70914, the awardee must submit a waiver request to the cognizant NSF Program Officer and Grants and Agreements Officer. Non-compliant purchases must not be made in advance of waiver approval. Guidance on the submission of an NSF waiver request is available on the Build America, Buy America website.
The NSF Build America, Buy America website is the best source of information on NSF implementation of the Act.

Submit and view all NSF waiver requests

Five Guidance Documents:

• NSF’s implementation of the Act
• Frequently asked questions
• Guidance on submission of an NSF waiver request
• How to submit public comments
• How do I know if the Act applies to my award?
NSF Waiver Process

1. **Recipient Organization Submits Waiver to NSF**
2. **Program Officer and Awarding Official Make Initial Recommendation**
3. **Division Director (DGA or DACS) Approves Initial Recommendation**
4. **Waiver is Posted to NSF.gov for Public Comment**
5. **Program Officer and Awarding Official Notify the Recipient Organization of the Waiver Decision**
6. **Waiver is Submitted to the Made in America Office for Review**
7. **Division Director and Senior Accountable Official Approve Final Recommendation**
Things for Recipients to Keep in Mind

• Application of BABA
• Early Engagement
• Market Research
• Waiver Process Assistance