



City of Madison – Community Development Division

Implementation of:

BUILD AMERICA, BUY AMERICA (BABA)

Requirements Handbook

Last Revised: April 2026

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BUILD AMERICA, BUY AMERICA (BABA) Requirements

The Build America, Buy America (BABA) Act, 41 USC § 8301 was enacted in the Infrastructure Investment and Jobs Acts on November 15, 2021. The Build America, Buy America Act (BABA) requires that all iron and steel, construction materials, and manufactured products used in federally funded infrastructure projects are produced in the United States. This requirement is known as the “Buy America Preference (BAP).”

The Lead Organization, Prime Contractors, and Subcontractors (all tiers) shall comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended unless a waiver or exemption of BABA applies to the project; as well as with the OMB guidance provided at 2 CFR Part 184, "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure"; if applicable to the project.

All entities subject to BABA must maintain records that verify compliance with the BAP requirement, further detailed below under “BABA Recordkeeping,” and provide them to City of Madison (CDD), Department of Housing and Urban Development (HUD), and/or other regulating entities if specified and upon request.

Applicability

The BABA Act – BAP requirement applies to infrastructure projects that:

- were awarded HUD (HOME/CDBG) funds from CDD in or after 2023, except those qualifying for exemption or waiver; and
- contain the use of iron or steel, construction materials, and/or manufactured products; and
- have a total cost of greater than \$250,000 (including federal and non-federal funds).

BABA Definitions and Terminology

Definitions of terms that have relevance to the interpretation and implementation of the BAP for HUD are defined in the BABA statute and may be found in HUD Notice [CPD-2023- 12](#), [CPD-2025-01](#), [2 CFR 184](#), and [OMB M-24-02](#) guidance. Some key term definitions are also provided below.

- **Infrastructure project:** any project that includes any of the following activities, regardless of whether infrastructure is the primary purpose of the project (2 CFR 184.3):
 - construction,
 - alteration (including demolition, rehabilitation, renovation, redevelopment, etc.),
 - maintenance, or
 - repair.
- **Infrastructure:**
 - Buildings and real property (including housing),
 - Utilities,
 - Water systems (drinking water and wastewater),
 - Electrical transmissions facilities and systems,
 - Broadband infrastructure, and

- transportation infrastructure.
- **Component:** an article, material, or supply, whether manufactured or unmanufactured, incorporated directly into a manufactured product; or, where applicable, an iron or steel product.
- **Construction materials:** articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of the definition shown below, except as provided in paragraph (2) of the definition shown below:
 - The listed items are:
 - non-ferrous metals (i.e., metals other than iron and steel)
 - plastic and polymer-based products (including polyvinylchloride (PVC or vinyl), composite building materials, and polymers used in fiber optic cables);
 - glass (including optic glass);
 - fiber optic cable (including drop cable);
 - optical fiber;
 - lumber;
 - engineered wood; and
 - drywall.
 - (2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.
- **Iron or steel products:** articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.
- **Manufactured products:** articles, materials, or supplies used for an infrastructure project that:
 - are not iron or steel products; or
 - have been processed into a specific form and shape; or
 - are combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies (i.e., when two or more materials are combined, they should be treated as a manufactured product).

General Waivers

In accordance with the provisions of the HUD-issued general waivers, BABA does not apply to the following:

- **Pre-2023 Awards:** Projects awarded CDBG funds from CDD prior to 2023 (contingent upon the project not being funded with other federal funds that are subject to BABA);
- **Non-Infrastructure Projects:** Projects that are not infrastructure projects (e.g., Planning (PLNG), Public Services (PS), Economic Development (ED) loan assistance-only, etc.);
- **Housing Infrastructure Projects Involving Less Than 5 Units:** Projects involving housing infrastructure improvements for less than five (5) living units;
- **Projects with \$250,000 or Less in Costs:** Projects with a total cost of \$250,000 or less (including all federal and non-federal funds);
- **Emergency Assistance Projects:** Projects that qualify for waiver under the “emergency and safety assistance” clause of BABA, including CDBG-DR, CDBGCV, ESG-CV, and CDBG-MIT projects (contingent

upon the project not being funded with other federal funds that are subject to BABA) [NOTE: ARPA funded projects are subject to BABA unless they qualify under another exemption or waiver.];

- **De minimus Cost Amount:** Up to five percent (5%) of the total cost of all covered materials (i.e., all iron, steel, manufactured products, and construction materials, regardless of their status under HUD’s phase-in waiver provisions) used in and incorporated into the infrastructure project may be exempted from BABA-BAP requirements (up to a maximum of \$1 million), contingent upon Lead Organization and CDD approval]; and
- **Projects with No Covered Materials:** Projects that will not be incorporating any iron, steel, construction materials, or manufactured products in the project scope;

Project-Specific Waivers

Waivers explained in HUD Notice CPD-2023-12, OMB M-24-02, and CPD-2025-01 are required by the Infrastructure, Investments and Jobs Act (IIJA) sections 70901 through 70952 for exceptions not otherwise exempt to the BAP. In addition to the general waivers, project-specific waivers may be granted for projects for which the BAP would otherwise apply. There are three (3) categories of project-specific waivers, including the following:

1. **Public Interest:** The BAP would be inconsistent with the public interest.
2. **Nonavailability:** Covered materials are not produced in the U.S. in sufficient and reasonably available quantities or of a satisfactory quality.
3. **Unreasonable cost:** Inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25%.

A **BABA Project-Specific Waiver Request form** ([link here](#)) must be completed and submitted with the required supporting documentation, following the instructions on the form, for project specific waiver consideration.

1. A Lead Organization, contractor, or subrecipient seeking a project-specific waiver must demonstrate the criteria for one or more of the project specific waiver categories are met. The contractors or subcontractors must submit waiver request documentation to the Lead Organization.
2. The Lead Organization must verify that it is complete and submit it to CDD.
3. CDD will review the documentation and if it is confirmed to be complete and in compliance, will submit the required waiver request information and additional documentation to the appropriate HUD representative for further review and processing.
4. A waiver must be approved by CDD, HUD, and the federal Made in America Office (MIAO) prior to an entity using construction items subject to the BAP for the grant funded project that are not produced in the U.S.
 - a. **Note: The waiver request review process includes a public notice requirement and the issuance of a decision by HUD and the MIAO may require six (6) weeks or more.]**
 - b. If the project is funded with multiple Federal funding sources, to avoid duplicative waiver requests, the Lead Organization and CDD are to coordinate with the “Cognizant Agency” (i.e., the entity contributing the greatest amount of Federal funds to the project) to process the

waiver request. The Cognizant Agency is responsible for consulting with the other Federal agencies, publicizing the proposed joint waiver, and submitting the proposed joint waiver for review to the MIAO.

Contracting Requirements, Related Documents, and Process

These documents and their latest revisions can be found at the website:

<https://www.cityofmadison.com/dpced/community-development/contracts-funding/contract-compliance>

- **Build America, Buy America (BABA) Requirements (Contract Insertion)** ([link here](#)) must be included in all contracts with prime contractors and subcontracts for projects subject to the BABA Act and BAP requirement.
- **Contractor/Purchaser BABA Self-Certification** ([link here](#)) and **Contractor/Purchaser BABA Covered Materials List** ([link here](#)) or a document with the same information must be completed and signed by all construction prime contractors and subcontractors upon contract award, and any other purchasers of covered materials as applicable, at the time of purchase.
 - A prime contractor's signed certifications and covered materials lists must be submitted by the Lead Organization to CDD upon availability.
 - A subcontractor's certification and covered materials list are to be completed and submitted with their first payment application to the prime contractor; the prime contractor is to submit them with their payment applications to the Lead Organization; and the Lead Organization is to submit them to CDD with grant payment requests.
 - CDD will not approve release of funds unless in receipt of BABA documentation.
 - Other purchasers' signed certifications and covered materials lists are to be completed at the time of purchasing and submitted to CDD by the Lead Organization with payments requests.
 - Prime contractors, subcontractors, and other purchasers are to submit updated copies of the covered materials list with their payment applications, if/when materials are added to the original list. The updated lists are to be submitted to CDD by the Lead Organization with payment requests.
 - A covered materials list may need to be submitted multiple times by the same contractor/purchaser if/when additional materials not initially reported are required for the project.
- The Project Budget with total project costs and all contract budgets (e.g., detailed bids and contractor payment applications) with the detailed contract costs, which show the costs of Covered Materials being used on the project (including costs per unit) are required. These data are reported on the Covered Materials list.
- If applicable, the list of subcontractors submitted to the Department of Civil Rights will be used by CDD to cross-reference necessary BABA documentation submission.

BABA Recordkeeping

Other BABA supporting documentation must be maintained by contractors and other purchasers that serves as verification of the information provided in their Covered Materials list and provided upon request. Examples include:

- Project or product waiver documentation, if applicable (this waiver documentation must also be submitted to CDD by the Lead Organization at the time of the waiver request);
- Country of origin documentation, such as:
 - A copy of the label indicating the product was made in the United States; and/or
 - A copy of the manufacturer's product description or technical specifications information that provides sufficient detail of country of origin; and/or
 - Certification or other documentation from the manufacturer demonstrating compliance;
- Country of origin search results documentation, such as:
 - Copies of web searches used (e.g., PDF/JPEG copies of web pages showing search terms and results including sources considered, eliminated, and chosen for further research),
 - Results of National Institute of Standards and Technology Manufacturing Extension Partnership (NIST MEP) identifying domestic manufacturers;
 - Copies of email, fax, or mail correspondence with Covered Materials manufacturers or suppliers; and
 - Phone communication records for calls with Covered Materials manufacturers or suppliers, including:
 - Dates and times of phone calls,
 - Phone numbers used,
 - Results of the phone communication (whether the phone communication was successful in reaching a manufacturer or supplier representative to receive answers to questions about BABA compliance, or whether the attempted communication was unsuccessful (e.g., left a message, phone line was busy, or phone line was disconnected),
 - Name of person reached (if talked to someone), and
 - Notes describing the substances of the conversation.