

Build America, Buy America Act (BABAA)

As it pertains to Iowa Homeland Security and Emergency Management (HSEMD)

BABAA Applies to

BABAA **DOES** apply to non-disaster grants. (**BRIC, FMA, PDM, EMPG, HSGP, others**)

BABAA does **NOT** apply to disaster grants. (**HMGP, PA**)

--In the applicable programs BABAA applies only to **infrastructure** projects.

Waivers

FEMA has two blanket BABAA waivers that would apply to HSEMD projects. Other waivers would be on a project specific basis.

1. **Small Projects Waiver** - Waives the BABAA requirements for infrastructure projects where the total project cost **does not exceed** the federal simplified acquisition threshold (currently set at **\$250,000**).
2. **De Minimis Waiver** - Waives the BABAA requirements for **up to 5% of the total material costs subject to BABAA, not to exceed \$1,000,000**.
3. FEMA may waive BABAA requirements if it finds:
 - a. Applying the domestic content procurement preference would be **inconsistent with the public interest** (public interest waiver);
 - b. 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** (non-availability waiver); or
 - c. 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** (unreasonable cost waiver).

Compliance

Compliance with BABAA should be documented by self-certification documents by a contractor or subcontractor or manufacturer. Suggested language can be found [BABAA Best Practices](#).

Miscellaneous

BABAA requires the following "Buy America" preference:

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.

Definitions

“**Infrastructure**” includes, at a minimum the structures, facilities, and equipment for:

- Roads, highways, and bridges
- Public transportation
- Dams, ports, harbors and other maritime facilities
- Intercity passenger and freight railroads
- Airports
- Water systems, including drinking water and waste water 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.

Construction Materials

- 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
- Drywall

Key resources

- www.madeinamerica.gov
- www.whitehouse.gov/omb/management/made-in-america
- <https://www.fema.gov/grants/policy-guidance/buy-america>
- OMB Memorandum M 22-11 (<https://www.federalregister.gov/documents/2023/02/09/2023-02617/guidance-for-grants-and-agreements>)

Compliance

Compliance with BABAA should be documented by

1. Contract Clause explaining BABAA requirements and self-certification. Suggested language is as follows...

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act (BABAA) shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA. 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. BABAA, 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 BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

2. Contractors must self-certify BABAA Compliance. Suggested language is as follows...

The undersigned certifies, to the best of their knowledge and belief, that:

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for “infrastructure” projects is provided “unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” Section 70914 of Public Law No. 117-58, §§ 70901-52.

The undersigned certifies that for the _____ (Project Name and Location) _____ the iron, steel, manufactured products, and construction materials used in this contract are in full compliance with the BABAA requirements including:

- 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 purchased with FEMA financial assistance must be produced in the United States. For a manufactured product to be considered produced 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% 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.*

“The, _____ [Contractor or Subcontractor] _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the [Contractor or Subcontractor] understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.”

Signature of [Contractor's or Subcontractor's] Authorized Official

Name and Title of [Contractor's or Subcontractor's] Authorized Official

Date