

STATE OF MARYLAND

CDBG PROGRAM

Build America, Buy America
November 3, 2023



Wes Moore, Governor
Aruna Miller, Lt. Governor

Jacob R. Day, Secretary
Owen McEvoy, Deputy Secretary

Maryland Department of Housing and Community Development
Division of Neighborhood Revitalization
7800 Harkins Road
Lanham, MD 20706



The domestic procurement preference requirements of the Build America, Buy America Act (BABA) apply to Community Development Block Grant (CDBG) funded infrastructure projects. Specifically, BABA requires:

- 1- all iron and steel used in the project must be produced in the United States;
- 2- manufactured products used in the project must be produced in the United States; and
- 3- construction materials used in the project must be produced in the United States.

Due to waivers issued by the U.S. Department of Housing and Urban Development (HUD), until notified to the contrary, for CDBG funded projects:

- BABA **ONLY** applies to the purchase of iron and steel and requires that all manufacturing from the initial melting stage through the application of coatings has occurred in the United States;
- BABA does **NOT** apply to “infrastructure” projects where the *total* cost of the project is \$250,000 or less; and
- BABA does **NOT** apply to housing rehabilitation or renovation projects if the *total* cost of the work per house is \$250,000 or less.

The requirements apply to the entire project regardless of source of funds for specific activities. It is only for articles, materials and supplies that are consumed, incorporated or permanently affixed to an infrastructure project.

BABA applies to all projects involving construction, alteration/rehabilitation, maintenance or repair of infrastructure. For purposes of BABA, “infrastructure” includes, at a minimum, the structures, facilities and equipment for roads, highways, and bridges; public transportation; dams; water systems including drinking water and wastewater systems; broadband; electrical transmission facilities and systems; utilities; facilities that generate, transport and distribute energy; and buildings and real property. Non-CDBG eligible activities were not included on this list.

If the CDBG funds are used in a project which includes other federal funds, the HUD specific waivers are not applicable and all BABA requirements will apply. CDBG staff will coordinate with other funding sources to ensure compliance requirements.

For iron and steel, produced in America means that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

The Buy America preference does not apply to tools, supplies or temporary items brought to the job site during construction such as scaffolding.

Grantee Requirements

The Grantee must ensure that they, their engineers, architects and contractors are in compliance. Specifically, the Grantee must enforce that:

- Plans, specifications, and reports and the contracts for those services should reference compliance with BABA requirements;
- Advertisements for bids should state that BABA requirements apply;
- Instructions to bidders should provide details as to BABA requirements;
- Contractors bid certification includes compliance with BABA requirements;
- Executed contracts must identify BABA definitions in the general or supplemental conditions;
- Executed contracts should identify penalties for non-compliance;
- Requests for Waivers of BABA requirements must be submitted for approval in a timely manner prior to procurement of iron and steel products; and
- Obtain the CDBG BABA Compliance Form from each contractor and subcontractor with the required certifications and documentations for iron and steel products.

The Grantee must contact the State immediately to discuss violations of BABA requirements.

Waivers

In certain cases, waivers can be permitted in cases where the CDBG Program and HUD finds that:

- 1- applying the domestic content procurement preference would be inconsistent with the public interest (Public Interest Waiver); or
- 2- types of iron, steel, manufactured products or construction materials are not produced in the United States in sufficient and reasonable available quantities or of a satisfactory quality (Non-availability Waiver); or
- 3- 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% (Unreasonable Cost Waiver).

Request for waivers must be discussed with CDBG staff prior to purchase. After consultation with HUD, if it is agreed that a waiver is necessary, the request will be submitted by the State to HUD on behalf of the grantee. All waivers will be considered based on policies and procedures outlined by HUD.

Public Interest Waiver – HUD may issue public interest waivers when it determines that its statutory mandate and policy goals cannot be achieved consistent with the Buy American requirements AND the proposed waiver would not meet the requirements for a non-availability or unreasonable cost waiver. HUD may consider issuing general applicability public interest waivers in the interest of efficiency and to ease burdens for Grantees.

Non-availability Waiver – For this waiver request, HUD will assess whether the Grantee performed a thorough market research and considered, where appropriate, qualifying alternate items, products or materials.

Unreasonable Cost Waiver – For this waiver request, HUD will examine whether the Grantee has provided adequate documentation that no domestic alternatives are available with the cost parameter. The justification must include, as applicable, a comparison of the cost of the domestic product to the cost of the foreign product or a comparison of the overall cost of the project with domestic products to the overall cost of the project with foreign origin products. Publicly available cost comparison data may be provided in lieu of proprietary pricing information.

For all waiver requests, specific forms must be submitted by Grantees with required documentation for approval prior to purchase of products.

If product purchase occurs without a written waiver approval, no federal funds from any source may be used for that purchase.

Additionally, for CDBG funded projects, HUD will consider providing waivers for exigent circumstances for projects that must proceed without delays to protect life, safety, security or to prevent the destruction of property. Grantees must submit a written request to CDBG staff who will determine if the situation qualifies for a waiver. If it is determined that it does, CDBG staff will submit the waiver request to HUD for approval.

Failure to comply with BABA would be considered a default of the CDBG grant agreement. Additionally, false certification could be a violation of the federal False Claims Act for which penalties can be treble damages plus a fine for each occurrence. Treble damages is a term that indicates that a federal statute permits a court to triple the amount of the actual or compensatory damages. In certain cases, there can even be criminal penalties imposed.

I, as a representative of _____ , certify that the iron and steel products identified on this list represents all iron and steel products used on this project and that certification and documentation received by the manufacturer confirms that these products are in compliance with the Build America, Buy America Act. All iron and steel products, from the initial melting stage through the application of coatings, occurred in the United States.

Signature:_____

Date:_____

Print Name:_____

NOTE: To avoid duplication, if multiple federal funding sources are used for a project, contractors can submit certification forms provided by those sources as long as the same information is identified and submitted.

Grantee Review Date:_____ Initials:_____