

Build America, Buy America Act (BABAA)

The Build America, Buy America Act (BABAA) was enacted as part of the Infrastructure Investment and Jobs Act (IIJA) of November 2021. IIJA provides significant funding for broadly defined infrastructure projects to states, local governments and private entities. Much of this funding is available as formula or direct funding for federal projects, though some is in the form of grants, loans and incentives. IIJA requirements, which are very stringent, influence two major areas of construction- materials and labor. The focus of this guide is on the requirements of BABAA in regard to the purchase of iron, steel and other manufactured products.

NOTE: BABAA should not be confused with prior requirements found within Buy American or Buy America regulations. BABAA incorporates these earlier Acts and requirements into a broader framework.

IIJA Material Resourcing and Content Requirements (BABAA)

BABAA applies to all federally funded infrastructure projects, unless there is an approved waiver by the federal funding agency due to supply issues. Additionally, BABAA provides a broad definition of infrastructure that encompasses almost any built structure or facility, to include:

- 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.

BABAA requires that all (1) iron and steel, (2) manufactured products and (3) construction materials be produced or manufactured in the United States:

Iron or steel products: means articles, materials, or supplies incorporated into an infrastructure project that consist wholly or predominantly of iron, steel, or both.

Manufactured products: means articles, materials or supplies incorporated into an infrastructure project that:

Do not consist wholly or predominantly of iron or steel or both; and

Are not categorized as construction material.

Construction materials: means articles, materials or supplies that consist of only one of the following listed materials:

Non-ferrous metals: a metal not containing, including, or relating to iron or steel,

Glass: Including optic glass

Fiber optic cable: Including drop cable

Optical fiber

Lumber: Engineered wood, drywall,

Plastic and polymer-based products: Such as PVC, composite building materials, and polymers used in fiber optic cables.

Construction materials do not include cement and cementitious materials, bricks, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

If a single item in an infrastructure project is not specifically identified on the list of construction materials and contains significant inputs of multiple listed or non listed materials, it should be categorized as a manufactured product and not construction materials. If a project includes hybrid construction materials and binding agents, any binding agents shall be disregarded, and each construction material must meet the Buy America Preference standard defined below and in [2 CFR 184.6](#).

Materials Produced in the United States

For materials to be considered “produced” in the United States, the following definitions apply:

Iron and Steel: all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States

Manufactured products: must be manufactured in the United States, and the costs of components that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all components of the manufactured product unless other minimum domestic content requirements are identified elsewhere. BABAA encompasses all items permanently incorporated into a project, whether consumed in, incorporated into, or affixed to the construction project.

Construction material standards: the Buy American Preference applies to all construction materials listed above and each material has its own standard to determine if it would be considered “produced in the United States”. [See §184.6 for the unique standard used for construction materials.](#)

This Act 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. Likewise, the preference does not apply to equipment and furnishings within the finished infrastructure project. The requirements to build and buy American goods provide an opportunity to support construction and manufacturing jobs, while strengthening and promoting American innovation for years to come.

REMINDER: BABAA applies across all federally funded infrastructure projects. It is important to ensure that contractors and subcontractors are aware of these requirements and adhere to all BABAA requirements.

REFERENCES

[SLFRF Final Rule FAQ's \(4/10/2023\), #6.18, #6.19- SLFRF and BABAA](#)

[Federal Register \(02/09/2023\) OMB Guidance on BABAA and Federal Awards](#)

