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MEMORANDUM - BUY AMERICA BUILD AMERICA ACT:

The [Build America, Buy America Act](#) (“BABA”) AKA the Buy America Preference (“BAP”), provides that for **FY2023 all iron and steel products and for FY 2024 all “building materials”** used in federally funded projects must be produced in the United States of America. BABA currently applies to any project utilizing over \$250,000 in aggregate private, state and federal funds.¹ All sources of federal funds will be added together when calculating the total.

Qualifying projects include **“the construction, alteration, maintenance, or repair of infrastructure in the United States”** and includes within the definition of infrastructure those items traditionally included along with buildings and real property. **BABA guidance specifically defines public/rental housing as “infrastructure.”**

These provisions apply to all **materials and equipment permanently incorporated into the project**, regardless of whether the items are acquired and paid for with federal funds or non-federal funds. Materials used temporarily do not trigger the requirement.

Guidance and Regulations:

<https://www.hudexchange.info/programs/baba/>

[Notice CPD-23-12: BABA Implementation Guidance](#)

Certification of Compliance:

Grantees and Subgrantees shall ensure compliance with BABA, including requirements that all iron, steel, and building materials incorporated into qualifying infrastructure projects must be manufactured in the United States, subject to phased implementation, guidance and waivers issued by HUD.

Grantees and Subgrantees shall require Bids submitted for the project to include a BABA Compliance sheet, and the project Contractor(s) and Architect(s) shall sign a BABA Certification of Compliance to be attached to all AIA G702 “Application and Certification for Payment” forms submitted with requisitions. Grantees, Subgrantees, and contractors shall maintain documentation supporting BABA compliance for a minimum of three (3) years. Grantees shall upload the Certificates of Compliance to GEARS.

¹ HUD has issued a temporary [waiver for projects](#) under \$250,000.



BUILD AMERICA, BUY AMERICA DEFINITIONS:

- **"Domestically produced in the United States of America"** means all manufacturing processes must occur in the United States of America, to mean, in one of the 50 States, the District of Columbia, Puerto Rico or in the territories and possessions of the United States.
- **Iron & Steel Manufacturing:**
 - Manufacturing processes are defined as any process which alters or modifies the chemical content, physical size or shape or final finish of iron or steel material such as rolling, extruding, bending, machining, fabrication, grinding, drilling, finishing, or coating whereby a raw material or a reduced iron ore material is changed, altered or transformed into a steel or iron item or product which, because of the process, is different from the original material. For the purposes of satisfying this requirement "coating" is defined as the application of epoxy, galvanizing, painting or any other such process that protects or enhances the value of the material. Materials used in the coating process need not be domestic materials.
 - The manufacturing process is considered complete when the resultant product is ready for use as an item in the project or is incorporated as a component of a more complex product by means of further manufacturing. Final assembly of a product may occur outside of the United States of America provided no further manufacturing process takes place.
 - Raw materials such as iron ore, pig iron, processed, pelletized and reduced iron ore, waste products (including scrap, that is, steel or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad rail, or the like and steel trimmings from mills or product manufacturing) and other raw materials used in the production of steel and/or iron products may, however, be imported. Extracting, handling, or crushing the raw materials for purposes which are inherent to transporting the materials for later use in the manufacturing process are exempt from Buy America.
- **Construction Materials:**
 - "Construction materials" includes an article, material, or supply— other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that is or consists primarily of:
 - 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; or
 - drywall
 - To provide clarity to item, product, and material manufacturers and processors, we note that items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

- Pending OMB's issuance of final standards on construction materials, and absent any existing applicable standard in law or regulation that meets or exceeds these preliminary standards, agencies should consider "all manufacturing processes" for construction materials to include at least the final manufacturing process and the immediately preceding manufacturing stage for the construction material. OMB is seeking additional stakeholder input before issuing further guidance identifying initial manufacturing processes for construction materials that should be considered as part of "all manufacturing processes."

Exceptions/Exemptions:

- Buy America provisions **do not apply to iron or steel products used temporarily** in the construction of a project such as temporary sheet piling, temporary bridges, steel scaffolding, falsework or such temporary material or product or material that remains in place for the Contractor's convenience.
- Regulations permit a minimal amount of steel or iron material to be incorporated in the permanent work on a federal-aid contract. The cost of such materials or products must not exceed one-tenth of one percent of the contract amount or \$2,500, whichever is greater. The cost of the foreign iron or steel material is defined as its monetary value delivered to the job site and supported by invoices or bill of sale to the Contractor. This delivered to site cost must include transportation, assembly, installation and testing.
- In the event the total cost of all "foreign" iron and steel product or material does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater, the use of such material meeting the limitations herein will not be restricted by the domestic requirements herein.