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MEMORANDUM - BUY AMERICA BUILD AMERICA ACT:

The [Build America, Buy America Act](#) (“BABA”) AKA the Buy America Preference (“BAP”), applies to any project utilizing over \$250,000 in aggregate private, state and federal funds. HUD has issued a temporary waiver for projects under \$250,000.

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.

REQUIREMENTS BASED ON CDBG FISCAL YEAR (FY) FUNDING: BAP requirements for qualifying CDBG funded projects are phased in by the CDBG fiscal year by which the project is funded.

1. FY2023 funded projects: **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. FY2024 funded projects: **All iron and steel, and all listed 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; and, for FY2025 funded projects forward;
3. FY2025 funded projects: **All iron and steel, and all listed manufactured products, and all construction materials** (listed and non-listed) are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Certification of Compliance:

Grantees and Subgrantees shall ensure compliance with BABA, subject to phased implementation, guidance and waivers issued by HUD. Grantees and Subgrantees shall utilize three (3) certifications in their projects:

1. The Bidder Certification Form, to be attached to all bids which include qualifying materials to be incorporated into the project and to be signed by the bidder (contractor, supplier, manufacturer);
2. The Submittal Certification Form, to be attached to all Submittals which include qualifying materials to be incorporated into the project and to be signed by the contractor or subcontractor;
3. The AIA G702 Certification Form, to be attached to all AIA G702 forms which include qualifying materials to be incorporated into the project and to be signed by the managing or general contractor.

Grantees, Subgrantees, contractors, and subcontractors shall maintain documentation supporting BABA compliance for a minimum of three (3) years. Grantees shall upload the Certificates of Compliance to GEARS.

Revised 1/2024



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
- 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.
- 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.

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.
- 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.

Guidance and Regulations:

- <https://www.hudexchange.info/programs/baba/>
- [Notice CPD-23-12: BABA Implementation Guidance](#)