



BUILD AMERICA, BUY AMERICA ACT POLICIES AND PROCEDURES

U.S. Department of the Treasury, Office of Gulf Coast Restoration

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Introduction to Policies and Procedures Manual

The U.S. Department of the Treasury, Office of Gulf Coast Restoration (OGCR), which is part of the Office of Recovery Programs is responsible for the administration of two grant programs authorized by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act): the Direct Component, and the Centers of Excellence Research Grants Program. The OGCR establishes program policies and procedures; provides guidance to eligible states, counties, and parishes; administers the Direct Component multiyear implementation plan review and acceptance process; implements and manages the Direct Component and Centers of Excellence Research Grants Program; conducts post-award monitoring and oversight of grant recipients; and administers grant closeout procedures.

The Infrastructure Investment and Jobs Act (IIJA), also known as the “Bipartisan Infrastructure Deal” was signed into law on November 15, 2021, and it includes the Build America, Buy America Act (BABAA) which applies to most federally funded awards for infrastructure. Consequently, the Direct Component program is also subject to the requirements of BABAA. As such, as of May 14, 2022, unless a waiver was in effect, BABAA requirements applied to all new awards and monetary amendments to existing awards for infrastructure, as infrastructure is defined in section 70912(5) of BABAA and 2 CFR Part 184, that were approved by Treasury under the Direct Component program. The processes outlined in this manual are designed to provide detailed guidance for implementing the requirements of BABAA for new awards and monetary amendments to existing awards for infrastructure approved under the Direct Component program that are not covered by a waiver.

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Revisions

The history of revisions to this manual is documented in Appendix L.

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Acronyms Used in Manual

Abbreviation	Corresponding Term
ANSI	American National Standards Institute
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
BABAA	Build America, Buy America Act
CFR	Code of Federal Regulations
GSA	General Services Administration
IIIA	Infrastructure Investment and Jobs Act
MIAO	Made in America Office
OIG	Office of Inspector General
OGCR	Office of Gulf Coast Restoration
OGC	Treasury's Office of General Counsel
OMB	Office of Management and Budget
RESTORE Act	Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economics of the Gulf Coast States Act
RGMS	RESTORE Grants Management System
SME	Subject Matter Expert

Definitions Used in Manual

Term	Corresponding Definition
Administrative cost	<p>As defined in 31 CFR § 34.2 and outlined in section A.1. of the June 2022 RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions related to Direct Component awards, administrative costs are indirect costs for administration incurred by the recipients that are allocable to activities authorized under the RESTORE Act. Administrative costs do not include:</p> <ul style="list-style-type: none"> i. Direct costs that directly support the scope of work and are identified as direct costs in the approved award budget; ii. Indirect costs that are identified specifically with or are readily assignable to facilities, as defined in 2 CFR § 200.414; and iii. Indirect costs of subrecipients.
Award	Treasury’s approval of a RESTORE Act, Direct Component grant application.
Buy America Preference	<p>All of the iron, steel, manufactured products, and construction materials used in an infrastructure project funded by an applicable federal financial assistance award must be produced in the United States pursuant to BABAA (see section 70912(2) of BABAA and 2 CFR 184.3). Standards vary by product category and are described in detail in 2 CFR Part 184 and in these policies and procedures.</p> <p>A Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. Buy America does not apply to tools, equipment, or temporary scaffolding brought to a construction site and removed at or before the completion of the infrastructure project, or to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.</p>
Category of products	Products of a similar nature. For example, a product would be 8-inch steel valve, and a category of products would be all valves.
Non-federal entity	Includes states, local governments (e.g., parishes and counties), territories, Indian tribes, institutions of higher education, and nonprofit organizations. See section IV of OMB Memorandum M-24-02 (which rescinds and replaces OMB Memo M-22-11) and 2 CFR § 200.1.
Project	A discrete scope of work funded by a Direct Component award.

	In most cases, a single Direct Component award will contain a single project. However, in some cases a Direct Component program award will consist of multiple projects.
Product categories	An article, material, or supply subject to the requirements of BABAA should be classified in one of the following product categories: iron or steel products, manufactured products, or construction materials. For ease of administration, an article, material, or supply should not be considered to fall into multiple categories.
Project representative	An individual employed by or under contract with the recipient, subrecipient, or construction contractor for the purposes of carrying out or overseeing the project, to include grants management staff and contractors, project managers, project engineers, etc.
Recipient	The eligible entity receiving a Direct Component grant directly from Treasury and, as such, legally responsible, for carrying out the award scope of work and complying with all award requirements.
Substantial completion	The milestone at which the project, or a portion of the project, is fit for its intended use.

2 BACKGROUND

2.1 Infrastructure Investment and Jobs Act (IIJA)

President Biden signed into law the Infrastructure Investment and Jobs Act¹ (IIJA or “the Act”), also known as the Bipartisan Infrastructure Deal on November 15, 2021. The IIJA includes the Build America, Buy America Act (BABAA), which introduced new mandatory domestic content procurement preference requirements for federal financial assistance for infrastructure projects. Infrastructure, as defined in BABAA, includes, at a minimum, the structures, facilities, and equipment for, in the United States, such as roads, highways, bridges, public transportation, dams, ports, harbors, 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, and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.² Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, does not constitute an infrastructure project.

2.2 Build America, Buy America Act (BABAA)

BABAA, which is included in the IIJA requires that no later than May 14, 2022, the BABAA requirements must apply to recipients of federal financial assistance awards (“awards”) for infrastructure projects, regardless of whether the projects are fully or partially funded by federal financial assistance. BABAA aims to strengthen America’s industrial base, safeguard national security, and promote high-paying jobs by mandating the use of domestically produced materials in infrastructure projects funded by an award under a federal financial assistance program.

BABAA covers four categories where the product or material must be produced in the United States, unless a waiver is in place. These categories are as follows:

- Iron or steel products
- Manufactured products
- Construction materials

2.2.1 Iron or Steel Products

Pursuant to 2 CFR Part 184, iron or steel products are defined as articles, materials, or supplies that consist wholly or predominantly of iron, steel, or a combination of both. In accordance with section 70912(6)(A) of BABAA, the term, “produced in the United States” as it relates to iron or steel products means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. An article, material, or supply is predominantly of iron or steel or a combination of both when the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of iron or steel mill products (such as bar, billet, slab, wire, plate or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components. If such article, material, or supply does not meet

¹ <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>.

² Note that this BABAA-specific definition of infrastructure, as defined in 2 CFR 184.4(c) and OMB Memorandum M-24-02, differs somewhat from the definition of infrastructure in Treasury’s implementing regulations for the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act at 31 CFR § 34.2.

the criteria for an iron or steel product or both, it will typically be categorized as a manufactured product if it meets the criteria set forth below in section 2.2.2. Examples of typical iron, and steel products include ductile iron pipes, steel pipes, gate valves, metal roofing, and iron and steel bars.^{3,4}

2.2.2 Manufactured Products

Manufactured products are articles, supplies, or materials that have been (i) processed into a specific form and shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material⁵ under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and under section i and ii of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials.

BABAA-compliant manufactured products are produced in the United States, and the cost of components of the manufactured product that are mined, produced, or manufactured in the United States exceeds 55 percent of the total cost of all components, with total cost calculated as follows:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.⁶

Examples of typical manufactured products include generators, HVAC systems, motors, and pumps.

2.2.3 Construction Materials

Construction materials are defined as articles, materials, or supplies that consist of only one of the following items: non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), fiber optic cable (including drop cable), optical fiber, lumber, engineered wood, or drywall. Minor additions of articles, materials, supplies, or binding agents to one of the construction materials listed above, or the inclusion of one of these listed construction materials as an input to another listed construction material, does not change the categorization of the construction material.

³ Office of Management and Budget (OMB) Memorandum M-24-02 (Appendix I), which rescinds and replaces OMB Memo M-11-22, and 2 CFR 184.3 provides the definition for iron and steel products and predominately of iron or steel or a combination of both.

⁴ Additional items are listed in OMB Memo M-24-02, Appendix I.

⁵ Section 70917(c) materials means “cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.”

⁶ See 2 CFR 184.5 regarding determining the cost of components for manufactured products.

In accordance with section 70912(6)(C) of BABAA, the term, “produced in the United States” as it relates to construction materials for infrastructure projects funded with federal financial assistance awards, including Direct Component awards means all manufacturing processes for the construction material occurred in the United States.

In accordance with 2 CFR 184.6, the standard for being considered “produced in the United States” for the following construction materials are:

- a) Non-ferrous metals. All manufacturing processes, from initial smelting to melting through final shaping, coating, and assembly, occurred in the United States.
- b) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent component materials, until the item is in its final form, occurred in the United States.
- c) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- d) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic, and polymer-based products, or any others.
- e) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- f) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
- g) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- h) Engineered wood. All manufactured processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) 15 Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.⁷

⁷ See OMB Memo M-24-02, Appendix I.

2.3 Office of Management and Budget and Made in America Office

The Office of Management and Budget (OMB) has statutory responsibility for issuing guidance to assist with the application and implementation of the new BABAA requirements by providing implementing regulations such as 2 CFR Part 184 and issuing OMB Memorandums, such as OMB Memorandum M-24-02, dated October 25, 2023 and titled, “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.” Agencies should consult directly with MIAO for policy decisions regarding the development and use of waivers.

In accordance with section 70923 of BABAA, OMB established the Made in America Office (MIAO). MIAO aims to increase reliance on domestic supply chains, minimize the need for waivers through a strategic process aimed at: achieving consistency across agencies; gathering data to support decision-making to make U.S. supply chains more resilient; bringing increased transparency to waivers in order to send clear demand signals to domestic producers; and concentrating efforts on changes that will have the greatest impact. OMB provided initial guidance on the implementation of BABAA through a memorandum released on April 18, 2022, titled, “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure” (OMB Memorandum M-22-11), which was later superseded by OMB Memorandum M-24-02, titled, “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure,” which was issued on October 25, 2023. The memorandum provides guidance to federal agencies, specifically those that have federal financial assistance programs that fund infrastructure projects, on how to implement the requirements of BABAA.

2.4 Treasury’s RESTORE Act Programs and Application of BABAA Requirements

The Department of the Treasury’s Office of General Counsel in consultation with OMB Counsel determined that BABAA applies to the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act), Direct Component program. The Department of the Treasury (Treasury) began to implement the BABAA requirements, which mandates a Buy America Preference for infrastructure projects funded under the RESTORE Act Direct Component program listed under assistance listing number 21.015. The BABAA requirements do not apply to the RESTORE Act, Center of Excellence Research Grants Program, because it does not fund grants for infrastructure projects.

Awards issued under the Direct Component program are funded by the Gulf Coast Restoration Trust Fund (Trust Fund) and administered by OGCR to eligible states, counties, and parishes in the U.S. Gulf Coast region. The RESTORE Act established the Trust Fund following the explosion on the Deepwater Horizon oil drilling rig in the Gulf of Mexico, which caused the largest offshore oil spill in the United States and exacerbated the effects of previous natural disasters. The Direct Component supports planning and implementation projects aimed at promoting the economic and ecological recovery of the U.S. Gulf Coast, which may involve infrastructure projects.

The definition of infrastructure provided under BABAA differs from the use of the term “infrastructure” in the RESTORE Act and Treasury’s implementing regulations at 31 CFR 34.2. For the purposes of these policies and procedures, the term “infrastructure” is defined in accordance with section 70912(5) of BABAA and 2 CFR Part 184, not the RESTORE Act and Treasury’s implementing regulations at 31 CFR 34.2. OGCR and Treasury OGC will evaluate on a case-by-case basis whether the Buy America Preference outlined in the BABAA requirements apply to proposed construction or real property improvement projects that do not squarely fall within the definition of infrastructure in the section 70912(5) of BABAA and BABAA and 2 CFR Part 184. OGCR has developed preliminary guidance that addresses construction

projects that are not considered infrastructure, such as those primarily focused on environmental protection, restoration, and natural ecosystem recovery.

For more information on RESTORE Act, Direct Component infrastructure project's applicability, visit the [RESTORE Act, Direct Component Build America, Buy America Act Frequently Asked Questions \(FAQs\)](#).⁸

3 ROLES AND RESPONSIBILITIES

BABAA implementation involves multiple parties with distinct roles and responsibilities. The key parties involved with BABAA are OGCR staff, OGCR contractual support staff, federal financial assistance recipients, subrecipients, project engineers, contractors, manufacturers, and suppliers. This section provides a general overview of the roles and responsibilities of the parties with respect to the application and implementation of BABAA requirements. Specific responsibilities and program implementation processes are described in the following sections and appendices.

3.1 Responsibilities of Recipients Under BABAA

The federal financial assistance recipient is the party who is responsible for complying with the BABAA requirements for the entirety of the project, from bidding through construction. Additionally, the recipient is required to comply with the terms and conditions of the Direct Component award.

Under the terms and conditions of the recipient's RESTORE Act, Direct Component awards, they must comply with all relevant federal statutes, regulations, executive orders, OMB circulars, Treasury's program guidance (including the RESTORE Act, Treasury's implementing regulations at 31 CFR Part 34, FAQs, and other guidance documents), the relevant RESTORE Act financial Assistance Standard Terms and Conditions and Program-specific Terms and Conditions, and any special award conditions for the grant. This includes certifications and assurances made by the recipient in its Direct Component grant application.

The recipient's responsibilities related to BABAA include:

- Directly communicating with OGCR regarding BABAA matters, including the need for any waivers, questions regarding how to comply with the BABAA requirements, and disclosing to Treasury any known or suspected noncompliance with BABAA requirements as it relates to its Direct Component grant;
- Incorporating BABAA requirements into bid documents and contracts, and ensuring BABAA requirements are taken into account during the design phase (or ensuring the subrecipient takes these actions if the subrecipient will be overseeing the design and construction contracts);
- Submitting requests for project- or award-level waivers based on the public interest, or, more commonly, unreasonable cost or nonavailability;
- Instructing the subrecipients, contractors, subcontractors, and as applicable, manufacturers and suppliers about BABAA requirements and documentation, as well as the requirements and process for requesting a waiver;

⁸https://home.treasury.gov/system/files/216/Direct_Component_FAQs_Update_2022_Final_to_Post_BABA_only.pdf

- Providing oversight on the project to ensure all subrecipients and/or contractors are following BABAA requirements;
- Notifying OGCR when iron, steel, manufactured goods, and construction materials have arrived on site and are ready for installation (to assist OGCR in scheduling a site visit); and
- Maintaining records of BABAA documents throughout the award period of performance and in accordance with the record retention requirements outlined in the terms and condition of the award, including bid documents, subawards, product certification letters, market research on product availability, and costs (plus supporting documentation such as price quotes), approvals, denials, and oversight inspections.

3.2 Responsibilities of Subrecipients Under BABAA

In cases where a project will be executed by a subrecipient, the recipient is responsible for fulfilling its obligations as it relates to subrecipients in accordance with the award terms and conditions including 2 C.F.R. § 200.332. While the recipient holds the primary responsibility for monitoring the use of Direct Component award funds and ensuring compliance with BABAA requirements, the subrecipient also has a role in meeting BABAA requirements.

The subrecipient is required to comply with the subaward terms and conditions established with the recipient, which flow down from the recipient's award terms and conditions as outlined in 2 CFR 200.101(b)(2). The subaward agreement must incorporate all the terms and conditions of the recipient's Direct Component award, including those related to BABAA.

The responsibilities of the subrecipient regarding BABAA include:

- Directly communicating with the recipient regarding BABAA matters, including the need for any waivers, questions regarding how to comply with BABAA, and the disclosure to the recipient of any known or suspected noncompliance with BABAA requirements as it relates to its Direct Component subaward;
- Incorporating BABAA requirements into bid documents and contracts, and ensuring BABAA requirements are taken into account during the design phase;
- Providing the recipient with all information necessary for the recipient to request any necessary project- or award-level waivers based on the public interest, or, more commonly, unreasonable cost or nonavailability;
- Providing oversight on the project to ensure all contractors and/or subcontractors are following BABAA requirements;
- Notifying the recipient when iron, steel, manufactured goods, and construction materials have arrived on site and are ready for installation (so the recipient can assist OGCR in scheduling a site visit);
- Maintaining records of BABAA documents throughout the subaward period of performance and in accordance with the record retention requirements outlined in the terms and condition of the subaward, including bid documents, product certification letters, market

- research on product availability, and costs (plus supporting documentation such as, price quotes), and oversight inspections, and providing these to the recipient upon request; and
- Instructing the contractors, subcontractors, and as applicable, manufacturers and suppliers about BABAA requirements and documentation, as well as the requirements and process for requesting a waiver.

3.3 Responsibilities of Design Contractors Under BABAA

In many cases, the contractor retained for the design and engineering phase of the project is different than the contractor retained for the construction phase. The design contractor may be overseen by the recipient or a subrecipient.

The responsibilities of the design contractor regarding compliance with the requirements of BABAA include:

- Incorporating BABAA requirements into project design, considering the availability of domestically produced materials and evaluating the suitability of domestically produced alternatives when only foreign-sourced materials are available;
- Estimating costs using domestically produced materials when available, highlighting any instances in which using domestically produced materials will increase the overall project cost by more than 25 percent; and
- Identifying any nonavailability or unreasonable cost waivers that may be needed and providing the recipient or subrecipient, as applicable, with the information required to draft such a waiver.

3.4 Responsibilities of Construction Contractors Under BABAA

Most projects are carried out by construction contractors and subcontractors under contracts or subcontracts with the recipient or subrecipient. Construction contractors, especially construction management firms have a crucial role in ensuring compliance with the BABAA requirements. BABAA requirements are included in the construction subcontractor's contract with the prime contractor or the prime contractor's contract with the recipient or subrecipient, as applicable. Therefore, OGCR and the recipient must ensure that recipients appropriately communicate BABAA requirements to subrecipients, contractors, and subcontractors, and as applicable, include those BABAA requirements in the subawards, contracts, and subcontracts.

The responsibilities of the contractor regarding compliance with the requirements of BABAA include:

- Communicating BABAA requirements in solicitations for bids from vendors for iron and steel products, manufactured goods, and construction materials;
- Conducting market research to identify domestic suppliers of iron and steel products, manufactured goods, and construction materials, and seeking price quotes;
- Proactively identifying any iron and steel products, manufactured goods, and construction materials that cannot be domestically sourced in a reasonable time frame to timely complete the infrastructure project that would increase the overall project cost by more than 25 percent (vis-à-vis the overall project costs using non-BABAA compliant iron and

- steel, manufactured goods, and construction materials), and working with the subrecipient or recipient, as applicable, to draft a waiver request for the recipient to submit to OGCR;
- Notifying the recipient or subrecipient, as applicable, when iron, steel, manufactured goods, and construction materials have arrived on site and are ready for installation (so that the recipient may notify OGCR and assist OGCR in scheduling a site visit);
 - Inspecting all iron and steel products, manufactured products, and construction materials delivered to the site prior to installation, in order to confirm that these materials meet the requirements of BABAA unless there is a relevant waiver in place. This entails reviewing any country-of-origin markings on the product itself and obtaining and reviewing manufacturer's certification letters;
 - Only procuring and installing BABAA-compliant iron and steel products, manufactured products, and construction materials for infrastructure projects unless there is a relevant waiver in place;
 - Rejecting shipments of any BABAA non-compliant iron and steel products, manufactured products, and construction materials for infrastructure projects (unless there is a relevant waiver in place) and ensuring the contractor does not invoice the recipient or subrecipient, as applicable for these BABAA non-compliant items;
 - Providing all manufacturers' certifications to the recipient or subrecipient, as applicable and completing the contract closeout process; and
 - When the contractor has one or more subcontractors on the project, incorporating BABAA requirements into bid documents and contracts, and ensuring BABAA requirements are taken into account during the design phase of the project.

3.5 Responsibilities of Manufacturer and Supplier Under BABAA

Manufacturers and suppliers must provide certifications demonstrating that the products they manufacture or supply for the infrastructure project comply with BABAA requirements. If a product initially promised by the manufacturer or supplier is no longer available within the established timeframe or in the required quantity to meet the project specifications and timeline, it is the manufacturers' or suppliers', as applicable, responsibility to communicate this information to their designated project contact, such as the project engineer, contractor, subcontractor, subrecipient, or recipient.

3.6 Responsibilities of Treasury Under BABAA

Treasury OGCR is responsible for implementing the requirements of BABAA for new awards and monetary amendments to existing awards for infrastructure under RESTORE Act, Direct Component program, if a waiver is not in effect. Specifically, OGCR is responsible for:

- Establishing BABAA program policy and procedures;
- Leading the OGCR Build America, Buy America Working Group comprised of Direct Component grant recipients; Determining if BABAA requirements apply to each new Direct Component grant or monetary amendment to existing grants for infrastructure project(s);

- Providing guidance on BABAA requirements to eligible states, counties, and parishes under the Direct Component program;
- Conducting post-award site visits and oversight of grant recipients to ensure compliance with the BABAA requirements;
- Providing training and technical guidance to recipients;
- Developing and submitting general applicability waivers to MIAO, as applicable;
- Reviewing product-, project- and award-level waiver requests; posting for public comment; reviewing public comments; and either denying the waiver or recommending approval to MIAO; and
- Directing subject matter expert (SME) contractors in tasks where support is necessary, such as assistance with waiver request reviews, trainings, waiver development, and project site visits.

4 INTEGRATING BABAA REQUIREMENTS INTO THE BID PROCESS

Before the project begins, the recipient should ensure that project documentation, including the subrecipient agreement (if applicable), bid documents, and contracts, clearly specify BABAA requirements. The recipient's inclusion of BABAA requirements in the bid process should streamline implementation by ensuring all parties are familiar with and consider BABAA requirements during design, construction, and recordkeeping.

In instances when the subrecipient, not the recipient, is responsible for administering contracts with construction contractors, the recipient should ensure that the subrecipient is able to comply with the BABAA requirements, and the subrecipient includes language regarding the requirements of BABAA in the bids documents and contracts.

4.1 Bid Documents

The recipient, or subrecipients must incorporate BABAA requirements into bid documents that relate to the infrastructure project funded with the Direct Component grant. These documents should include, at a minimum, the definitions of the four product categories and describe the need to purchase American-made products as outlined in BABAA, with references to BABAA, 2 CFR Part 184, OMB Memos, and OGCR BABAA guidance. All BABAA requirements included in the bid and contract documents should be clear and concise, providing project expectations prior to the start of construction. In instances where the bid requires design work, the bid should indicate that American-made products as outlined in BABAA must be considered and included in the design to meet BABAA requirements. When developing bid and contract documents, the recipient or subrecipient, as applicable, must ensure the bid language:

- Informs bidders that BABAA requirements apply to the infrastructure project.
- Provides references to documentation such as BABAA, 2 CFR Part 184, OMB Memos, and OGCR's BABAA guidance, and includes definitions of BABAA-specific language, regarding the four product categories, and expectations for waiver availability and use.

- Outlines expectation for documentation and records retention requirements as outlined in the award terms and conditions or subaward terms and conditions, as applicable, including the request and maintenance of the manufacturer's certifications for iron and steel products, manufactured products, and construction materials that fall under the BABAA requirements.

Refer to Appendix D for sample bid language.

4.2 Contract Language

Once a bid has been accepted and the project contracts are developed and signed, the contract language must include BABAA requirements, so the recipient or subrecipient, as applicable, can hold contractors and subcontractors as applicable, accountable and ensure BABAA requirements are met.

The contract language must include the following:

- A summary of the BABAA requirements and an explanation of how they apply to the project;
- Reference guidance documents, such as BABAA, 2 CFR Part 184, OMB Memos including the OMB Memo M-24-02, OGCR's BABAA guidance, and this manual;
- A notification to the subrecipient (if applicable), project engineer, contractor(s), and subcontractor(s) that upon completion of the infrastructure project, they will be required to sign a BABAA certification letter. Example certification letters can be found in Appendices E–H; and
- Recipients, subrecipients, and other relevant parties must document their implementation and compliance with the requirements of BABAA during the award period of performance and may use the document templates provided by OGCR.

4.3 Pre-Construction Meetings

During the pre-construction meeting, the recipient or subrecipient, as applicable, will review the BABAA requirements with contractors and subcontractors, as applicable, to ensure all parties clearly understand their roles and responsibilities as they pertain to the BABAA requirements. The discussion should also provide opportunities for the contractors and subcontractors to ask questions. Topics that should be discussed include, but are not limited to, the following:

- The definitions of the four product categories and examples of products that fall under each category (see Section 2.2 of this document).
- The process for receiving and inspecting products to ensure they are American-made as outlined in BABAA and match the BABAA certifications provided (see Section 5 of this document).
- The different types of BABAA certifications required and the information to look for on the certifications (see Section 5.2 of this document).
- The various types of waivers that may be applicable (see Section 6 of this document).
- Steps to take if a waiver request is necessary, including the required information to be included in the waiver request (see Section 7 of this document).

- Available resources such as this manual, BABAA, 2 CFR Part 184, OMB Memos including OMB Guidance M-24-02, OGCR's BABAA webpages, and other relevant sources of information.

5 PURCHASING, INSTALLING, AND DOCUMENTING BABAA-COMPLIANT PRODUCTS

5.1 Including BABAA-Compliant Products in Specifications

Recipients and subrecipients must ensure the Buy America Preference is considered in project specifications and domestic products are included in the project design. An alternative design should be considered, or a waiver developed, if there is a potential need for a foreign product in the categories of iron, steel, manufactured products, and construction materials. During the design phase, the recipient and subrecipient, as applicable, or a contracted third-party design engineer shall:

- Whenever possible, incorporate BABAA-compliant products into the project design and specifications.
- Communicate early on if there are any iron and steel products, manufacturing products, or construction materials that have historically been challenging to obtain domestically.
- Identify potential constraints to the project design, such as the nonavailability of a domestically manufactured pump with the required rating and propose acceptable alternatives that meet the design requirements.
 - Example: If copper piping is not available domestically in sufficient quantities, consider using a different material, such as PEX pipe.
- Highlight time-sensitive project milestones or deadlines that could be impacted if a product is delayed or not available domestically.
 - Example: Connecting to an existing public utility, which may disrupt services to the public.

5.2 Content and Types of Manufacturer's Certifications

Manufacturers and suppliers will be responsible for providing individual BABAA certifications for each iron and steel product, manufactured product, and construction material provided for the project. Template manufacturer's certifications can be found in Appendices I, J, and K below.

5.2.1 Manufacturer's Certification Content

Each certification, regardless of product category, should include the following five elements:

- Project information (title and/or project number; location of project);
- Specific product description;
- Location of manufacture (city and state);
- Citation of BABAA requirements and assertion of BABAA compliance; and
- Signature of an authorized representative (e.g., company representative, owner, product engineer).

In addition to the five elements, the manufacturer may include additional information in the certification to provide further clarity. This may include manufacturer product numbers; a narrative description of the product; or language noting the cost of the components of manufactured products that are mined, produced, or manufactured domestically and/or certifying that the total cost of the components of the domestic manufactured product is greater than 55 percent of the total cost of all components of the manufactured product.

5.2.2 Certification Types

Manufacturer's Certification	A manufacturer's certification is provided by a single manufacturer who was responsible for all steps of the manufacturing process certifies that the product was made domestically.
Step Certification	<p>A step certification is a certification in which each entity (e.g., supplier, fabricator, manufacturer, and processor) that contributes to manufacturing the products certifies that their individual "step" in the process was performed domestically. Each entity provides their certification and all other certifications developed prior to their step to the next entity in product development.</p> <p>The final manufacturer can provide copies of all the certifications from the product development process or a singular certification if they are willing to certify to the product's compliance with BABAA requirements at all stages of manufacturing. In this case, the manufacturer will include the name of all the manufacturers and locations (city and state) where each step of manufacture was completed, as well as a short description (one or two words) of what the entity performed (e.g., melting, cutting, or fabrication).</p>
Supplier Certification	Suppliers may provide certifications if they have knowledge about the origin of the product and that all processes were completed in the United States. These certifications should be signed by an authorized party, such as a manager or owner for the company who supplied the product. In addition to the five elements discussed above, supplier certifications should clearly indicate the manufacturer's name and location. However, if the supplier was not present for all steps of the product's manufacturing process, OGCR discourages suppliers and distributors from creating certification letters for manufacturers.
Mill Certification	<p>A mill certification is a quality assurance record of the physical and chemical properties of raw material. They are generally provided for items such as rebar and sheet metal. The document certifies the metal produced and provided for testing meets the minimum requirements set by manufacturing standards, such as American National Standards Institute (ANSI), American Society of Mechanical Engineers (ASME), American Society for Testing and Materials (ASTM), and American Water Works Association (AWWA).</p> <p>To address the five elements, mill certifications will include:</p> <ul style="list-style-type: none"> • A cover letter or supplier letter that identifies the project and cites BABAA requirements, if not included in the mill certification document;

	<ul style="list-style-type: none"> • Product name; • Mill address (usually in the header); • Signature of an authorized party such as the quality manager, company owner, or similar party with knowledge of the product process; and • Specific product information. <p>Mill certifications are often included with step certifications if the product is used in fabrication or is painted or coated by another manufacturer.</p>
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5.3 Installing Products During Construction

During the construction phase, the installation of products is primarily carried out by contractors and/or subcontractors. The recipient is ultimately responsible for ensuring products installed meet the BABAA requirements unless a relevant waiver is in place. If a subaward has been provided to a subrecipient, the subrecipient will be responsible for compliance oversight as outlined in the subaward terms and conditions.

When installing products, contractors shall verify that a product meets the BABAA requirements. The contractor must inspect every product when it arrives onsite, verify that the products delivered match the products ordered, and review the delivery documentation (i.e., packing slip, purchase order, and product certification). Contractors should also ensure the product has country of origin labels or markings that state “Made in America” or “Made in the United States.”

If a contractor discovers that the manufacturer or supplier delivered an alternate foreign-made product without notifying the contractor that the equivalent domestically-produced product was unavailable and a relevant waiver is not in place for the project at issue, then the contractor should not install the product, return it to the manufacturer or supplier and request a refund, not charge the recipient or subrecipient for it, and replace the foreign-made product with a domestically-produced product from another source and inform the recipient or subrecipient, as applicable, of the situation. If there is a subrecipient on the project, the subrecipient must inform the recipient as soon as practicable.

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If the foreign product has already been installed, the contractor should immediately notify the subrecipient or recipient, as applicable. The recipient or subrecipient, as applicable must direct the contractor to remove and return the foreign product and procure the equivalent domestically-produced product from another source, and install it; the contractor should not charge for the labor to replace the product.

5.4 Collecting and Maintaining BABAA Documentation

The recipient is responsible for complying with all reporting requirements outlined in section H of the 2022 RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions for the Direct Component grant, as applicable. The recipient is required to maintain all records “pertinent” to the award for a period of three years from the date of submission of the final

expenditure report, and all records must be maintained as described in Award Terms and Conditions and 2 CFR § 200.334. In cases where there is a subaward, the subrecipient shall maintain BABAA records for the record retention period outlined in the subaward and make all relevant BABAA information available to the recipient when requested and as outlined in the subaward.

Records to be maintained must include the following:

- Copies of all contract(s) and subcontract(s) and documentation related to contracts and subcontracts(s), such as Requests for Proposals and received proposal/bid certification letters.
- Copies of all subaward agreements, if applicable.
- Documentation demonstrating the domestic origin of products and/ or materials not covered by a BABAA waiver, such as manufacturing certifications (described above in Section 5.2).
- Documentation of actual costs (e.g., invoices) for products and materials covered by an unreasonable cost waiver, as well as the quotes received to substantiate the unreasonable cost of domestically produced products.
- BABAA waiver requests and approvals, including supporting documentation uploaded to the RESTORE Grants Management System (RGMS).
- Documentation of site visits, inspections, desk reviews, and other monitoring and oversight activities conducted by the recipient and/or subrecipient to ensure contractor(s) and subcontractor(s), as applicable, are complying with the BABAA requirements.

Documentation that originates from construction activities will likely come through contractors, who will be responsible for obtaining the proper BABAA documentation, such as BABAA certification letters and waiver request research information.

To ensure the recipient is meeting all recordkeeping requirements, the recipient should develop a process for tracking and filing all records related to the BABAA requirements.

OGCR will maintain all records related to projects and grants subject to the BABAA requirements, waiver requests, and approvals and denials of such waiver requests, and oversight activities related to BABAA in RGMS. These records include the Waiver Form Parts I and II, including all the attachments; photographs from site visits; site visit reports; comments from posted draft waivers; and any other compliance documents, including records of compliance assistance training. Additionally, OGCR will continue to utilize the [Direct Component Grant Awards](#) and [RESTORE Act – Buy America Preference](#) websites for posting awards, waivers, definitions, resources, and BABAA guidance.

5.5 Disbursement Approval by Recipient

As part of the disbursement process, when the contractor submits a payment request, they must include a list of BABAA-covered products (e.g., iron and steel products, manufactured products, construction materials) and their country of origin. As part of recipient or subrecipient monitoring, as applicable, the recipient or subrecipient should select a small number of products from this list and request the accompanying BABAA-compliant manufacturer's certifications to ensure that each certification has the elements discussed in Section 0.

6 BABAA WAIVERS

6.1 Overview

On a case-by-case project, program, or award basis, OGCR may waive the application of the BABAA requirements based on public interest, nonavailability of domestically produced products, or unreasonable costs of domestically produced products. It is important for recipients, subrecipients, project representatives, contractors, and subcontractors to be familiar with these waiver types to identify what waiver they may need and to gather the necessary information for a waiver request when applicable. Information regarding the submittal and review of waivers is included in Section 7 and 8. Please note that new awards and monetary amendments for existing awards for infrastructure projects as defined by the RESTORE Act that do not meet the BABAA definition for “infrastructure” (e.g. planning awards, awards to provide workforce training, awards to promote the consumption of Gulf Coast seafood through marketing campaigns, etc.) are categorically excluded from the BABAA requirements and do not require a waiver. Additionally, any new funds allocated solely for purposes other than funding “infrastructure” (e.g., adding additional planning funds to an award or funding a workforce development and job creation project) do not trigger the BABAA requirements, regardless of the purpose of the original award.

RESTORE Act, Direct Component awards may be combined with multiple federal funding sources to fund an infrastructure project. Prior to making a Direct Component award that includes other federal financial assistance that applies BABAA, OGCR shall identify the total estimated contribution(s) of each funding source, consult with the other federal agencies providing funding for the project, and determine which agency will serve as the Cognizant Agency for Made in America (Cognizant Agency) as it relates to BABAA requirements on the project. The Federal agency contributing the greatest amount of Federal funds for the project may be considered the Cognizant Agency and may take responsibility for coordinating with the other Federal awarding agencies to develop the waiver, but each Federal agency waiving the Buy America Preference must make their own waiver determination and issue the waiver pursuant to section 70914(b) of BABAA. The Cognizant Agency cannot independently issue a waiver that applies to other agencies, but other agencies may rely on the work performed by the Cognizant Agency when proposing and issuing waivers for a single infrastructure project. When appropriate, two or more agencies relying on the work performed by the Cognizant Agency may propose a joint waiver. The Cognizant Agency is responsible for consulting with the other federal awarding agencies on waiver issues and waiver requests, publicizing the proposed joint waiver, and submitting the proposed joint waiver to MIAO for review. The Cognizant Agency may be identified in the Remarks section of the notice of award for the Direct Component grant.

The information provided below is subject to change based on any updated OMB Guidance or new waiver information. For the most up-to-date information on BABAA-related waivers, visit the [RESTORE-Buy America Preference](#) website.

In accordance with section 70914(b) of BABAA and as outlined in section VI of OMB Memorandum M-24-02, there are three types of waivers available to waive application of the Buy America Preference for infrastructure projects or specific products used in infrastructure projects. These waivers can be applied in three ways, project specific, product specific, and general applicability. The three waiver types⁹ are:

⁹ OMB Guidance M-11-22.

- (1) Nonavailability waiver: This waiver is used when the types of products (iron and steel products, manufactured products, or construction materials) produced in the United States are not in sufficient and reasonably available quantities or of a satisfactory quality.
- (2) Unreasonable cost waiver: This waiver is applicable when the inclusion of iron and steel products, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.
- (3) Public interest waiver: This waiver is applicable when applying the Buy America Preference would be inconsistent with the public interest.

6.2 Project Waivers

Project waivers are specific to a single infrastructure project, and it is the recipient's responsibility to submit waiver requests for their projects. The process for submitting waiver requests is outlined in Section 7 of this document.

OGCR anticipates that most waiver requests will fall into the categories of nonavailability or unreasonable cost waivers. Public interest project waivers, on the other hand, are expected to be relatively rare.

6.2.1 Nonavailability Waivers

A recipient can request nonavailability waivers for a project when they can demonstrate that a specific product from the BABAA product category is either not produced at all or not available in sufficient quantities with satisfactory quality in the United States. When granted such waivers allow the recipient to use non-domestically produced products in the project when domestically produced products are not available.

Nonavailability waivers may also apply when the timeframe to obtain the domestically produced product will adversely impact the project milestones or deadlines. For instance, if a delayed part would affect the general public's access to a public utility, it could be a valid reason to seek a nonavailability waiver.

6.2.2 Unreasonable Cost Waivers

Recipients can request an unreasonable cost waiver when using iron and steel products, manufactured products, or construction materials produced in the United States would result in a cost increase of more than 25 percent for the overall project. This waiver is applicable to a specific project.

6.2.3 Public Interest Waivers

Public interest waivers are granted when Treasury determines that other important policy goals cannot be achieved consistent with the BABAA requirements and the proposed waiver would not meet the requirements for a nonavailability or unreasonable cost waiver. Recipients must discuss conditions and justification for public interest waivers with OGCR prior to submittal of such waiver request.¹⁰

¹⁰ For more details on the public interest waivers, please see OMB Memorandum M-24-02, page 11.

6.3 General Applicability Waivers

OGCR has the authority under BABAA to develop general applicability waivers designed to promote efficiency and ease the burden on recipients in limited situations. These waivers can apply to multiple projects or be granted at the program level, covering multiple awards. They can be product-specific, applying to product or category of product, or non-product specific, applying to manufactured products or specific project types. Treasury will not permit recipients to submit requests for general applicability waivers. If OGCR develops such a waiver, and this waiver is found by MIAO to be consistent with applicable law and policy, OGCR will determine when a particular project is covered by a relevant general applicability waiver. In some cases, recipients may need to provide documentation to Treasury demonstrating that they met the criteria at the time of grant application. For example, to qualify for coverage under the Treasury's *Public Interest General Applicability Waiver from Application of Section 70914(a) of the Build America, Buy America Act to the RESTORE Act, Direct Component Infrastructure Projects That Were in the Funding Pipeline by May 14, 2022* (Pipeline waiver) effective as of February 17, 2023, recipients need to provide written documentation proving that they performed substantial public engagement related to the selection of the project for inclusion in the recipient's Multiyear Implementation Plan as required by Treasury's implementing regulation at 31 CFR §§ 34.303(b)(8) and (9), prior to May 14, 2022. Once issued, general applicability waivers must be reviewed by OGCR within five years or less from the effective date to ensure there is a justification for retaining the waiver.

Although general applicability waivers may be based on nonavailability of a product or all categories of products subject to the BABAA requirements, most general applicability waivers are expected to be public interest waivers.

In accordance with section 70914(d)(1) of the BABAA, [existing general applicability waivers, such as the Pipeline waiver shall be reviewed by Treasury within 5 years after the date on which it was issued. In reviewing general applicability waivers, Treasury must:](#)

- (A) Publish in the *Federal Register* a notice that—
 - (i) describes the justification for the general applicability waiver; and
 - (ii) requests public comments for a period of not less than 30 days on the continued need for the general applicability waiver; and

- (B) Publish in the *Federal Register* a determination on whether to continue or discontinue the general applicability waiver, considering the comments received in response to the notice published under paragraph (A).

Please note that the review requirement for existing general applicability waivers outlined above does not apply to any product-specific general applicability waiver that was issued before May 19, 2021.¹¹6.3.1 Adjustment Period Waiver

OGCR issued the *Treasury RESTORE Act, Direct Component Program General Applicability Public Interest Adjustment Period Waiver*, also referred to as the Adjustment Period Waiver. Effective July 13, 2022, through January 12, 2023, this six-month public interest waiver allowed OGCR and Direct Component recipients an adjustment period to keep projects moving while assessing how to best implement the BABAA requirements. As a result, BABAA did not apply to new Direct Component awards and monetary amendments to existing awards for infrastructure issued between July 13, 2022, and January 12, 2023. OGCR did not issue any new awards and monetary amendments to existing awards for infrastructure

¹¹ See section 70914(d)(2) and (3) and OMB Memorandum M-24-02, page 13.

projects between May 14, 2022 (the date BABAA went into effect), and July 13, 2022 (the start date of the adjustment period waiver)., BABAA does not apply to any awards or amendments made prior to January 13, 2023.

BABAA requirements will apply to new Direct Component awards for infrastructure project as defined by section 70912(5) of BABAA made on or after January 13, 2023, unless the infrastructure project funded under the Direct Component grant is covered by the Pipeline waiver or by another BABAA waiver. Please note that BABAA requirements do not apply to new Direct Component awards or monetary amendments to existing awards for projects that are not infrastructure as defined in section 70912(5) of BABAA. Even when BABAA did not apply to an initial award because the initial award was issued prior to January 13, 2023, BABAA requirements will apply to a monetary amendment to an existing award if (1) the monetary amendment was issued on or after January 13, 2023, (2) the new obligation of Direct Component funds is to fund infrastructure, and (3) the new obligation of Direct Component funds for infrastructure is not covered by another BABAA waiver.

For information regarding the adjustment period waiver visit [RESTORE Act, Direct Component BABAA Adjustment Period Final Waiver](#) webpage and for more guidance on the BABAA requirements as it relates to Direct Component awards, please see the [RESTORE Buy America Preference page](#)

6.3.2 Pipeline Waiver

On February 17, 2023, Treasury issued the *Public Interest General Applicability Waiver from Application of Section 70914(a) of the Build America, Buy America Act to the RESTORE Act, Direct Component Infrastructure Projects That Were in the Funding Pipeline by May 14, 2022*. This waiver is referred to as the Pipeline Waiver.

The waiver applies to new grants and monetary amendments to existing grants for infrastructure projects under the Direct Component that were in the eligible entity's funding pipeline by May 14, 2022. These projects had already undergone substantial public engagement for inclusion in the multiyear implementation plan as required by Treasury's implementing regulations at 31 CFR §§ 34.303(b)(8) and (9). The waiver justification is that the expense and effort of re-estimating costs for project materials and restarting the public engagement process to include BABAA requirements would conflict with the public interest. The approved waiver, comments, and comment responses are posted on the [RESTORE Act – Buy America Preference](#) webpage.

Recipients may need to provide documentation of the public engagement process as evidence to OGCR that a project meets the criteria of the Pipeline Waiver. This documentation might include copies of public meeting minutes, public notices, or board resolutions; recordings or presentations from public meetings or workshops; copies of public comments received, with a date stamp or other indication of when it was received; articles in the press describing the public engagement that has occurred; or equivalent documentation. If the recipient of the Direct Component grant requests funding for an activity on its multiyear implementation plan approved by OGCR prior to the BABAA implementation date (May 14, 2022), then no documentation needs to be submitted as evidence that the project meets the criteria to be covered by the Pipeline waiver.

For additional information regarding the Pipeline waiver, visit [RESTORE Act, Direct Component BABAA Funding Pipeline Final Waiver](#).

6.3.3 General Applicability Nonavailability Waiver

For unavailable specific domestic products, OGCR may issue broad program waivers for products or categories of products ensuring a targeted, time-limited, and conditional approach as described in OMB guidance. An example of a general applicability nonavailability waiver is the stainless-steel nuts and bolts waiver that the Environmental Protection Agency (EPA) approved for the American Iron and Steel requirements. This short-term waiver allowed for iron or steel nuts and bolts to be used on EPA projects even if they were made outside of the United States until domestic manufacturing caught up with the demand.

7 DEVELOPING AND SUBMITTING WAIVER REQUESTS

OMB guidance requires that waivers be time limited, targeted, and conditional. Project waivers, by their nature, meets all three of these criteria. A recipient could potentially identify the need for a general applicability waiver, but the general applicability waivers are developed and issued by OGCR.

7.1 Project Waiver Development

Recipients may request a project waiver on a case-by-case basis. The required Build America, Buy America Act Waiver Information Form Part I and II includes sections for general information, narratives, and research that needs to be provided with the waiver request.

The recipient is responsible for submitting all waiver requests. However, in instances of subawards, the subrecipient may develop and/or review the waiver request and provide it to the recipient for review prior to the recipient submitting it to OGCR via RGMS. Upon receiving the completed waiver request, OGCR will review it following the procedures outlined in Section 8 of this document. Recipients should designate a single point of contact for all BABAA waiver communications for each project, so that subrecipients and project representatives can provide information to a centralized location.

Please note that the information regarding recipient waiver requests is subject to change as OGCR develops and implements its BABAA waiver processes.

7.1.1 Assessing the Need for a Project Waiver

The first step in requesting a waiver is identifying the need for a waiver. While the recipient is responsible for applying for a project waiver, any project participant can identify the need for a waiver at any stage of the project. Ideally, the project engineer or designer should identify the need for a nonavailability or unreasonable cost waiver during the design phase. Unreasonable cost waivers are likely to arise during or soon after the bid phase for a construction contract, when bidders note how the cost of the project will be affected by BABAA requirements. In such cases, the recipient may consider soliciting both a BABAA-compliant bid and an alternate bid without the BABAA requirements to support an unreasonable cost waiver request.

Many contractors identify the need for nonavailability waivers during construction as they procure the products for the project and find that they are unable to obtain one or more domestic products or that products have unreasonable timelines for obtaining them that it would adversely impact project milestones. In addition, third-party design engineers can support the recipient and/or subrecipient by reviewing specifications to determine if the project could use alternative designs and by providing the recipient with product specifications for communication with manufacturers.

Public interest waivers are very rare and could occur at any point of the project. These waivers would only apply if the product or category of products does not fall under any other waiver and there is sufficient justification that there would be a significant impact on public interest in applying the BABAA requirements to the projects.

7.1.2 Waiver Request Process

To streamline the waiver review process, the recipient should develop the request as thoroughly and accurately as possible prior to submittal to Treasury. To accomplish this, the recipient and the parties assisting with the waiver development (e.g., subrecipients, design engineers, contractors) must be familiar with the product that is the subject of the waiver and the information required. Until a waiver request is provided to the recipient by OGCR and approved by OGCR, the project must continue to comply with the BABAA requirements. The following sections provide additional details on how to complete the due diligence review and submit the waiver request.

7.1.3 Product Research Process

Before submitting the waiver request, the recipient, subrecipient, design engineer, contractor, and/or other relevant parties must conduct a due diligence review. Due diligence reviews consist of completing research to verify product availability, timeframe to obtain a product, or unreasonable cost, or determining that meeting the BABAA requirements would not be in the public interest. The type and level of research into products during the due diligence review will vary depending on the product and the type of waiver.

7.1.3.1 *Nonavailability Waiver Research*

A nonavailability waiver may be necessary if a recipient determines a contractor is unable to source a BABAA-compliant product that meets the project technical specifications, or that the domestic product is unavailable in the required construction timeframe. To provide sufficient justification for a nonavailability waiver, the recipient should coordinate with the subrecipients, project engineers, and contractors to obtain all relevant project and product information and include such information in the waiver request. Once the project team has determined the need for a waiver, the recipient, subrecipient, and/or contractor should follow the following steps:

1.	Review the product specifications, and how the product is incorporated into the project. Consult the design engineers as needed for the full context of why a particular product is needed, the performance needs of the product, and whether alternate products could be used without compromising structural integrity or performance. For example, if a valve requires a specific type of gasket due to a corrosive environment and valves manufactured domestically do not meet this standard, a foreign value meeting that standard would be required.
2.	Try to identify at least three potential domestic manufacturers of the same or equivalent products. Identify contacts using catalogues, web-based searches, discussions with project contractors and suppliers, and consultations with industry associations (Examples of relevant industry associations include the Water and Wastewater Equipment Manufacturers Association, https://wwema.org ; the National Association of Manufacturers, https://www.nam.org , and the American Iron and Steel Institute, https://www.steel.org) . If three potential domestic manufacturers cannot be found, document all the steps taken to identify such manufacturers and that the search was

	unsuccessful. Examples of this documentation would include email responses from contractors, suppliers, and industry associations indicating no domestic suppliers exist and screenshots showing that a web search returned no relevant results.
3.	Contact the identified manufacturers by telephone or email following these best practices for conducting product research.
By Telephone:	Request to speak with the party who would have knowledge and authority to discuss detailed specifications and manufacturing location. Request information regarding product availability, lead times, location of manufacture, and ability to certify the requested product as domestic. Example manufacturer's certification templates are included in Appendices I, J, and K. Also request cost information in case a waiver based on unreasonable cost is necessary (see 7.1 below) .
By Email:	When sending emails, include all product specifications and any other relevant information, such as required lead time, to reduce back and forth between parties. Also request cost information in case a waiver based on unreasonable cost is necessary (see 7.1 below) .
4.	If one or more manufacturers were identified during the recipient's or Treasury's market research but the recipient is requesting a nonavailability waiver because the BABAA-compliant product(s) cannot be delivered within a reasonable time frame, review the project schedule. Note any timeline constraints, such as project milestones, scheduling dependencies, and/or the need to complete construction prior to hurricane season. Then determine whether the delivery time of the BABAA-compliant product is reasonable.
5.	Document all information obtained, including contact details, emails, phone discussions, and references.

7.1.3.2 *Unreasonable Cost Waiver Research*

Unreasonable cost waivers require a cost comparison of the project based on procuring all domestically produced products versus the project with some foreign products. To support a waiver, the comparison must provide evidence that procuring only BABAA-compliant products would increase the overall cost of the project by more than 25 percent. To gather information for the cost comparison, the recipient should hold discussions with project representatives. Specifically, to complete due diligence and provide evidence that the project qualifies for an unreasonable cost waiver, recipients must complete the following steps:

1.	Prepare a cost estimate for a fully BABAA-compliant project. This would likely be the bid estimate for the project, but it may need to be modified to accommodate new information obtained since the bid. This estimate can be based on the installed cost of the products or the cost of each product in the project.
2.	Prepare a cost estimate for the project if it was not required to procure all domestic products. This estimate can be based on the installed product cost or the cost of each product in the project.

3.	Gather publicly available cost information (i.e., costs from a catalog or website) or vendor quotes as necessary to support the above.
4.	If applicable, determine the administrative cost to comply with the BABAA requirements such as staff and contractor resources to collect and track certifications.
5.	Document any information used to determine installed product costs, including websites, catalogues (including publication date), and direct communications with manufacturers or suppliers.
6.	Provide a summary comparing the two project cost estimates, demonstrating that the overall project costs with all BABAA-compliant products is more than 25 percent higher than the estimate using the most competitively-priced products. Publicly available cost comparison data may be used in lieu of proprietary pricing information.
7.	Consult with relevant parties (i.e., subrecipients, contractors, design engineers) to identify products that would bring the BABAA-compliant products' cost estimate down below the 25 percent threshold. These products would be the subject of the waiver and could be procured from a foreign source if the waiver is approved. For example, if the total project cost using 100% BABAA-compliant products was \$3.2 million and the total project cost using lowest-cost products regardless of country of origin was \$2.5 million, the total project cost is 28% higher using BABAA-compliant products, since $(\$3.2 - 2.5) / 2.5 = .28$. The total project cost would have to be reduced to \$3.125 million in order for the new project cost including mostly BABAA-compliant items to be only 25% greater than the project cost with non-BABAA compliant products. The contractor, subrecipient, and recipient would then need to work together to determine which products should be foreign-sourced in order to bring the project cost down by \$875,000, which is the gap between the original BABAA-compliant project cost and the revised project cost that is 25 percent more than the non-BABAA compliant project cost.

7.2 Public Interest Waiver Development

Public interest project waivers are expected to be rare. If a recipient requests a public interest waiver, the recipient will need to demonstrate that it is not in the public interest to enforce BABAA requirements for a given project grant.

The specific evidence needed to support a public interest waiver will be determined through discussions with OGCR on a case-by-case basis. The recipient should engage in dialogue with OGCR to understand the specific requirements and provide the necessary justification for the waiver request based on the unique circumstances of the project.

7.2.1 Completion and Submittal of Waiver Forms

Once the recipient has completed due diligence, it can submit the waiver request to Treasury. To do this, the recipient begins by accessing the RGMS and providing all information identified in Form Part I and Part II, as applicable. If the recipient is not able to access RGMS, it should contact OGCR for technical guidance.

Form – Part I includes 24 items that recipients must address. Form – Part II is an Excel spreadsheet recipients must complete when products are identified in the waiver request and/or products must be itemized for an unreasonable cost waiver request. The [RESTORE Act – Buy America Preference](#) webpage has the most up-to-date information and resources regarding RESTORE Act, Direct Component Buy America Preference.

7.2.1.1 BABAA Waiver Request Information Form – Part I

When filing a request for a waiver, the recipient will start by completing BABAA Waiver Request Information Form – Part I in RGMS. The recipient must include the following information:

- The type of waiver (public interest, nonavailability, or unreasonable cost).
- The waiver level they are applying for (for nearly all waiver ‘award-level’ should be selected; however, if the grant is for a program with multiple projects, select ‘project-level’)
- What product or category of products the waiver request is for, including details on quantities, product specifications, lead times, and costs, as applicable.
- Justification as to why the recipient should be granted the requested waiver, including the due diligence research documentation, as applicable.
- Any additional information such as project plans, the project timeline, and product specifications (to aid OGCR in performing its due diligence).
- Contact information (the contact person may differ from the certifying official and should be someone well positioned to answer technical questions about the project).
- The date and signature from the certifying official.

Narrative requirements vary between the different types of waivers. Recipients should pay close attention to details and provide information from the due diligence research, as appropriate.

- Public interest waivers: BABAA Waiver Request Information Form – Part I requests that the recipient contact OGCR for a consultation prior to preparing and submitting the waiver request.
- Nonavailability waivers: BABAA Waiver Request Information Form – Part I requires that the recipient upload a narrative response that includes the results from the due diligence performed to determine lack of availability of the identified product. Recipients should also include documentation of market research conducted, emails, project specifications, and quotes.
- Unreasonable cost waiver: BABAA Waiver Request Information Form – Part I requests that the recipient upload a narrative response that includes products (iron and steel products, manufactured products, and construction materials) the recipient requests to be waived from the BABAA requirements to reduce the total project cost below the cost threshold (i.e. so that the total project cost once the waiver is granted would be 25 percent or less of the total project cost with competitively-sourced products). The information should include the final cost comparisons of obtaining the product domestically versus from foreign sources and, if completed, the Waiver Request Due Diligence Form.

All waiver requests should include additional items or information that could be useful during OGCR's review of the waiver application, such as project timelines or detailed drawings or specifications of products identified in the waiver request.

7.2.1.2 BABAA Waiver Request Information Form – Part II

If the recipient is requesting a waiver for unreasonable cost and/or for multiple products, regardless of the waiver type, they must complete BABAA Waiver Request Information Form – Part II as part of the waiver process; BABAA Waiver Request Information Part II is usually completed by the project engineer or construction contractor. BABAA Waiver Request Information Form – Part II is a spreadsheet that requires the input of product information, including the product North American Industry Classification System (NAICS) codes and Product Services Codes (PSCs), which can be found at the following websites:

- Acquisition.gov Product and Service Code Manual: <https://www.acquisition.gov/psc-manual>
- Census.gov North American Industry Classification System: <https://www.census.gov/naics/>

Additionally, for unreasonable cost waiver requests, BABAA Waiver Request Information Form – Part II requires the price of the foreign-sourced products and the domestic-sourced products proposed to be waived. This should be reflective of the information obtained during the due diligence research.

7.3 General Applicability Waiver Development

OGCR develops and issues general applicability waivers. OGCR will ensure the key principles outlined in the OMB Memorandum M-24-02 are met, including that the waiver is time-limited, targeted, and conditional. OMB provides the following guidance on these key principles:

- Time-limited: In certain limited circumstances, a federal agency may determine that a waiver should be constrained principally by the length of time, rather than by the specific projects to which it applies. Waivers of this type may be appropriate, for example, when an item that is “nonavailable” is widely used in projects funded by a particular program’s awards. When issuing such a waiver, the agency should identify a short, definite time frame (e.g., no more than one to two years) designed to ensure that, as domestic supply becomes available, domestic producers will have prompt access to the market created by the program.
- Targeted: Waivers that are not limited to particular projects should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) necessary. Waivers that are overly broad will tend to undermine domestic preference policies. Broader waivers will receive greater scrutiny from MIAO.
- Conditional: Federal agencies are encouraged to issue waivers with specific conditions that support the policies of the Act and the Executive Order.”¹²

7.3.1 Treasury’s Process

BABAA grants OGCR the authority to develop general applicability waivers to apply at a program level and across multiple awards. The process is as follows:

¹² OMB Guidance M-11-22.

1.	OGCR will determine if one of the following types of general applicability waivers is needed:
Nonavailability waivers:	OGCR will only pursue general applicability waivers based on nonavailability when research by OGCR (or by another federal agency that has already received such a waiver) demonstrates that one or more products or category of products is not available domestically. Research should focus on first establishing if the product is made domestically, then whether it is produced in sufficient quantities and whether it can be consistently and reliably provided to meet required project timelines. Examples of past general applicability nonavailability waivers issued under other domestic content procurement preference requirements include a short-term stainless-steel nuts and bolts waiver and a pig iron waiver issued by EPA.
Public interest waivers:	OGCR will only pursue general applicability waivers based on public interest to comply with the Direct Component program’s statutory requirements or advance program objectives. These waivers may cover specific project types or phases or another subset of projects meeting specified criteria. The Pipeline and adjustment period waivers are examples of public interest waivers.
2.	OGCR will conduct research and outreach:
Nonavailability waivers:	OGCR will conduct research on the availability of products considered for inclusion in the waiver. This research will be similar to research conducted for project waivers, but likely more extensive. It may include outreach to recipients, subrecipients, construction contractors, manufacturers, industry associations, and other interested parties.
Public interest waivers:	OGCR may consider waivers passed by other agencies, as well as waivers that are specific to OGCR. Research for public interest waivers will be on a case-by-case basis, but like nonavailability research, it may include outreach to recipients, subrecipients, construction contractors, manufacturers, industry associations, and other interested parties. Additionally, information directing the waiver research may come from working with or contacting MIAO’s workgroups or MIAO directly.
3.	OGCR staff will draft waiver language in consultation with OGCR’s BABAA Working Group.
4.	The OGCR Program Director will review the draft and make changes as necessary to ensure the waiver is time-limited, targeted, and conditional as outlined in OMB Memorandum M-24-02.
5.	Treasury’s Office of General Counsel will review the draft waiver for legal sufficiency.
6.	OGCR will consult with MIAO regarding whether the waiver is consistent with applicable laws and policies.
7.	OGCR will post the draft for a minimum of 30 days for a public comment period on madeinamerica.gov , as well as OGCR’s Buy America Preference webpage.

8.	The OGCR Policy Analyst, Construction/BABA Manager, or other OGCR staff will be responsible for reviewing comments, with the help of the Program Director, and as needed with input from the OGCR Working Group. OGCR will incorporate any necessary changes into the waivers.
9.	The updated proposed waiver will then be sent by OGCR to MIAO for review.
10.	MIAO will ensure that the waiver is consistent with applicable laws and policies and notify OGCR of its determination.
11.	OGCR will post the approved waiver on the RESTORE Act – Buy America Preference webpage, along with the comments and OGCR’s response to comments. OGCR shall also cross-post the waiver to the GSA BuyAmerica.gov ¹³ website.

OGCR will maintain awareness of the general applicability/national waivers that other agencies issue for products or categories of goods. OGCR may use the centralized [madeinamerica.gov](#) waiver website, meetings of the MIAO Interagency Working Group, and individual agency websites (in particular [EPA’s Clean Water Act State Revolving Fund](#) BABAA webpage) to track relevant waivers that other agencies are issuing. At the time of developing these procedures, OMB does not allow agencies to directly adopt other agency waivers.

7.3.2 Working with MIAO

For both project and general applicability waivers, OGCR will consult with MIAO; MIAO will review the waiver to determine if it is consistent with applicable laws and policies. When OGCR is developing a general applicability waiver, it will consult with MIAO regarding the waiver prior to posting it for public comment. OGCR will submit all draft waivers, the award- or project-level and general applicability, to the MIAO for review after the public comment period has concluded for MIAO’s determination as to whether the draft waiver is consistent with applicable law and policy as required by OMB Memorandum M-24-02, page 6.

¹³ BuyAmerica.gov redirects to MadelInAmerica.gov.

Appendices

Appendix A: Iron and Steel Products

All iron and steel used in the project must be produced in the United States unless a BABAA waiver has been approved. All manufacturing processes must have occurred in the United States, from the initial melting stage through the application of coatings. Examples include, but are not limited to:

- | | | |
|---|--|---|
| <ul style="list-style-type: none"> • Access Hatches • Access Ramps • Aeration Pipes and Fittings (separate from aeration/blowers) • Angles • Backflow Preventers/Double Check Valves • Baffle Curtains • Ballast Screens • Bathroom Stalls • Beam Clamps • Bollards • Cable Hanging Systems • Cast Bases • Cast Iron Hinged Hatches • Cast Iron Riser Rings • Catch Basin Inlets • Clarifier Tanks • Cleanout/Monument Boxes • Coiled Steel • Column Piping • Concrete Reinforcing Bar, Wire, and Fibers • Condensate Sediment Traps • Construction Covers and Frames • Corrugated Pipe • Couplings • Curb and Corner Guards • Curb Boxes • Curb Openings • Curb Stops • Decking • Detectable Warning Plates • Digestor Covers • Dome Structures • Door Hardware | <ul style="list-style-type: none"> • Framing • Gate Valves • Generic Hanging Brackets • Grating • Ground Test Wells • Ground Testing Boxes • Guardrails • HVAC Registers, Diffusers, and Grilles • Hydrants • Inlets • Iron or Steel Bar • Iron or Steel Benches • Joists • Junction Boxes • Knife Gates • Ladders • Lampposts • Lifting Hooks, J-bar, Connectors, and Anchors for Concrete • Lined and Unlined Fittings • Lined and Unlined Pipe • Lockers • Man Baskets and Material Platforms • Manhole Covers and other Municipal Castings • Manhole Rings and Frames • Manhole Risers • Manhole Steps • Meter Boxes • Mud Valves • Municipal Casting Junctions | <ul style="list-style-type: none"> • Pre-Fab Steel Buildings/Sheds (simple structure, unfurnished) • Pre-Stressed Concrete Cylinder Pipe (PCCP) • Railings • Reduced Pressure Zone (RPZ) Valves • Roofing • Service Boxes • Service Saddles • Sheet Piling • Sinks (not part of eyewash systems) • Solenoid Valves • Stairs • Static Mixers • Stationary Screens • Steel Hinged Hatches • Steel Riser Rings • Structural Steel • Surface Drains • Tanks • Tapping Sleeves • Telescoping Valves • Tipping Buckets • Trash Receptacles • Tree Grates • Tree Guards • Trench Grates • Trusses • Tubing • Valve Box Covers and Risers • Valve Boxes • Valve Stem Extensions • Valve Stems (excluding handwheels and actuators) |
|---|--|---|

<ul style="list-style-type: none"> • Doors • Downspout Shoes • Drainage Grate Frames and Curb Inlets • Drainage Grates • Ductwork • Expansion Joints • Expansion Tanks (diaphragm, surge, and hydropneumatics) • Fasteners • Fencing and Fence Tubing • Fire Escapes • Flanged Pipe • Flanges • Flap Gates 	<ul style="list-style-type: none"> • Non-Mechanical (stationary) Louvers and Dampers • Overhead Rolling Doors/ Uplifting Doors (manual open, no motor) • Pipe Clamps and Restraints • Pipe Connectors • Pipe Hangers • Pipe Piling (any type of steel piling) • Pipe Spool (e.g., pipe, flanges, connectors) • Pipe Supports • Pitless Adaptors • Pre-Cast, Iron/Steel Reinforced Concrete (all types, regardless of iron/steel content percentage) 	<ul style="list-style-type: none"> • Valves • Wall Panels • Wall Sleeves/Floor Sleeves • Welding Rods • Well Casing • Well Screens • Wire • Wire Cloth • Wire Rod • Wire Rope and Cables
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Appendix B: List of Typical Manufactured Products

Manufactured Products

All manufactured products used in the project must be produced in the United States unless a BABAA waiver has been approved. Manufactured products are articles, supplies, or materials that have been (i) processed into a specific form and shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material¹⁴ under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and under section i and ii of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials. . BABAA-compliant manufactured products are produced in the United States, and the cost of components of the manufactured product that are mined, produced, or manufactured in the United States exceeds 55 percent of the total cost of all components, with total cost calculated as follows:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

<ul style="list-style-type: none"> • Actuator Superstructures/ Support Structures • Aeration Nozzles and Injectors • Aerators • Analytical Instrumentation • Analyzers (e.g., ozone, oxygen) • Automated Water Fill Stations • Blowers/Aeration Equipment • Boilers, Boiler Systems • Chemical Feed Systems (e.g., polymer, coagulant, treatment chemicals) • Chemical Injection Quills • Chemical Injectors 	<ul style="list-style-type: none"> • Exhaust Fans • Fall Protection Anchor Points • Fiberglass Tank w/Appurtenances • Filters (and appurtenances, including underdrains, backwash systems) • Flocculators • Fluidized Bed Incinerators • Furnished Pre-Fab Buildings (such as furnished with pumps, mechanics inside) 	<ul style="list-style-type: none"> • Meters (including flow, wholesale, water, and service connection) • Motorized Doors (unit) • Motorized Mixers • Motorized Screens (such as traveling screens) • Motors • Pelton Wheels • Pipeline Flash Reactors (similar to injectors) • Plate Settlers • Precast Concrete Without Iron/Steel Reinforcement • Presses (including belt presses)
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¹⁴ Section 70917(c) materials means “cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.”

<ul style="list-style-type: none"> • Clarifier Mechanisms/Arms • Compressors • Controls and Switches • Conveyors • Cranes • Desiccant Air Dryer Tanks • Dewatering Equipment • Dewatering Roll-Offs • Disinfection Systems • Drives (e.g., variable frequency drives) • Electric/Pneumatic/Manual Accessories Used to Operate Valves (such as electric valve actuators) • Electrical Cabinetry and Housings (such as electrical boxes/enclosures) • Electrical Conduit • Electrical Junction Boxes • Electronic Door Locks • Elevator Systems (e.g., hydraulic) • Emergency Life Systems (including eyewash stations, emergency safety showers, fire extinguishers, fire suppression systems including sprinklers /piping/valves, and first aid) 	<ul style="list-style-type: none"> • Galvanized Anodes/Cathodic Protection • Gear Reducers • Generators • Geothermal Systems • Grinders • Heat Exchangers • HVAC (excluding ductwork) • HVAC Dampers (if appurtenances to aerators/blowers) • HVAC Louvers (mechanical) • Instrumentation • Intake and Exhaust Grates (if appurtenances to aerators/blowers) • Laboratory Equipment • Ladder Fall Prevention Systems • Ladder Safety Posts • Lighting Fixtures • Lightning and Grounding Rods • Mechanical or Actuated Louvers/Dampers • Mechanical Rakes • Membrane Bioreactor Systems • Membrane Filtration Systems • Metal Office Furniture (fixed) 	<ul style="list-style-type: none"> • Pressure Gauges • Pump Cans/Barrels and Strainers • Pumps • Safety Climb Cable • Sampling Stations (unless also acting as hydrant) • Scrubbers • Sensors • Sequencing Batch Reactors (SBR) • Slide and Sluice Gates • Spray Header Units • Steel Cabinets (fixed interior/furniture) • Steel Shelving (fixed) • Supervisory Control and Data Acquisition (SCADA) Systems • Tracer Wire • Valve Manual Gears, Actuators, Handles • Voltage Transformer • Water Electrostatic Precipitators (WESP) • Water Heaters • Weir Gates
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Appendix C: Sample Treasury BABAA Standard Contractor Contract and Bid Language

Suggested Treasury BABAA Contractor Contract Language:

The Contractor acknowledges to and for the benefit of **[Insert Treasury Direct Component Recipient Name]** (“Recipient”) and the United States Department of the Treasury (“Treasury”) that it understands the goods and services under this Agreement are being funded with grant funds made available by the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act), Direct Component program, which is administered by the Office of Gulf Coast Restoration (OGCR) that has statutory requirements commonly known as the Build America, Buy America Act (BABAA) that require all iron and steel products, manufactured products, and construction materials used in the infrastructure project be produced in the United States (Buy America Preference Requirement), including iron and steel products, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents, warrants and covenants to and for the benefit of the Recipient and Treasury that (a) the Contractor has reviewed and understands BABAA requirements that (b) all of the iron and steel products, manufactured products, and construction materials used in the project must be produced in the United States in a manner that complies with the BABAA requirements, unless a waiver of the requirement is approved by Treasury, and (c) the Contractor will provide any further verified information, certification, or assurance of compliance with this paragraph, or information necessary to support a waiver of the BABAA requirements, as may be requested by the Recipient or Treasury. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Recipient or Treasury to recover any damages from the Contractor for any loss, expense, or costs (including without limitation attorneys’ fees) incurred by the Recipient or Treasury that resulted from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Treasury or any damages owed to the Treasury by the Recipient). Where appropriate, the Treasury may require the removal of an identified non-domestic product and require that the product be replaced with a domestically produced product at the Recipient or Contractor’s expense. While the Contractor has no direct contractual privity with the Treasury, as the Federal awarding agency to the Recipient for the grant funding provided for its project, the Recipient and the Contractor agree that the Treasury is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of Treasury.

Suggested Treasury BABAA Bid Language:

Advertisement for Bids

This request for proposal is for services related to an infrastructure project that is subject to the Build America, Buy America Act (BABAA) requirements included in the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 177-58, §§ 70901-70953. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined in 2 CFR Part 184 and the Office of Management and Budget’s Memorandum M-24-02 titled, “ Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure,” dated October 25, 2023.

Advertisement for Engineering Design Contract

This request for proposal is for services related to an infrastructure project that is subject to the Build America, Buy America Act (BABAA) requirements included in the Infrastructure Investment and Jobs Act

(IIJA), Pub. L. 177-58, §§ 70901-70953. This request for proposal will consider an engineering design that requires installation of domestically-made products in this project. The engineering design must incorporate in the Bid Addenda, Executed Contracts, and Change Orders that all iron, steel, manufactured products, and construction materials are BABAA compliant, produced in the United States, as further outlined in 2 CFR Part 184 and the Office of Management and Budget's Memorandum M-24-02 titled, "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure," dated October 25, 2023. In absence of a readily available and sufficient quantities of domestically made products, the Contractor will consider and explore all available alternatives before requesting a waiver.

Instructions to Bidders

Any request for substitute or "or equal" shall include the manufacturer's certification of compliance with the Build America, Buy America Act (BABAA) requirements included in the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 177-58, §§ 70901-70953.

If the Instructions include a federal requirements section, include the following BABAA requirements for this project.

Bid Form

Bidder's representation section:

Bidder is familiar with all laws and regulations that may affect the cost, progress, and performance of the work, including the Build America, Buy America Act (BABAA) requirements.

General or Supplemental Conditions

Definitions section:

BABAA: The Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Deal of 2021 includes the Build America, Buy America Act that requires a Buy America Preference for federal financial assistance awards for infrastructure which stipulates that all iron and steel, manufactured products, and construction materials used in such infrastructure projects are produced in the United States.

Construction Materials: Construction materials are defined as articles, materials, or supplies that consist of only one of the following items: non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), fiber optic cable (including drop cable), optical fiber, lumber, engineered wood, or drywall. Minor additions of articles, materials, supplies, or binding agents to one of the construction materials listed above, or the inclusion of one of these listed construction materials as an input to another listed construction material, does not change the categorization of the construction material

Manufactured Product: Manufactured product are articles, supplies, or materials that have been (i) processed into a specific form and shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material¹⁵ under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product.

¹⁵ Section 70917(c) materials means "cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives."

However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and under section i and ii of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials. .BABAA-compliant manufactured products are produced in the United States, and the cost of components that are mined, produced, or manufactured in the United States exceeds 55 percent of the total cost of all components, with total cost calculated as follows:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Manufacturer's Certification: Documentation provided by a manufacturer certifying that the items provided by manufacturer meet the Buy America Preference requirements of BABAA.

Contractor's Responsibilities section:

All products must meet BABAA requirements.

Contractor shall include manufacturer's certification for BABAA requirements with all applicable submittals. If a specific manufacture is used in the bidding, a statement that Manufacturer will comply with BABAA requirements must be included with the bid submission. Contractor shall comply with BABAA requirements, including coordination with manufacturers, distributors, and suppliers to correct deficiencies in any BABAA documentation.

Engineer/Architect approval of shop drawings or samples shall include review of BABAA documentation.

Contractor shall certify upon completion that all work and materials have complied with BABAA requirements.

For any change orders, Contractor shall provide BABAA documentation for any new products or materials required by the change.

Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work. Contractor should ensure that Engineer/Architect has an approved manufacturer's certification or waiver prior to items being delivered to the project site.

By submitting an application for payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials, to Contractor's knowledge, are compliant with BABAA requirements.

Federal Requirements section:

Buy America Preference: Iron and steel products, Manufactured Products, and Construction Materials used in this project must comply with the requirements set forth in section 70914 of BABAA and 2 CFR Part 184..

Appendix D: Subrecipient’s Certification of Compliance with the Requirements of Section 70914 of the Build America, Buy America Act (BABAA), and Other Applicable Federal Regulations and OMB Guidance

DATE: _____

RE: **PROJECT NAME** _____

RECIPIENT _____

GRANT NUMBER _____

I hereby certify that to the best of my knowledge and belief all iron and steel products, manufactured products, and construction materials installed in this project comply with the requirements of section 70914 of the Build America, Buy America Act (BABAA) and 2 CFR Part 184, or are the subject of a waiver approved by the Secretary of the Treasury or designee.

This certification to be submitted upon completion of the project to the Recipient.

Name of the Subrecipient (PRINT)

By Authorized Representative (SIGNATURE)

Title

Appendix E: Contractor’s Certification of Compliance with the Requirements of Section 70914 of the Build America, Buy America Act (BABAA) and Other Applicable Federal Regulations and OMB Guidance

DATE: _____

RE: **PROJECT NAME** _____

CITY, STATE _____

CONTRACT NUMBER _____

FUNDED UNDER GRANT NUMBER _____

I hereby certify that to the best of my knowledge and belief all iron and steel products, manufactured products, and construction materials installed in this project by my company and by all subcontractors and manufacturers/suppliers contracted with comply with the requirements of section 70914 of the Build America, Buy America Act (BABAA) and 2 CFR Part 184, or are the subject of a waiver approved by the Secretary of the Treasury or designee.

This certification to be submitted upon completion of the project to the project engineer.

Name of the Contractor (PRINT)

By Authorized Representative (SIGNATURE)

Title

Appendix F: Subcontractor’s Certification of Compliance with the Requirements of Section 70914 of the Build America, Buy America Act (BABAA) and Other Applicable Federal Regulations and OMB Guidance

DATE: _____

RE: **PROJECT NAME** _____

CITY, STATE _____

CONTRACT NUMBER _____

FUNDED UNDER GRANT NUMBER _____

I hereby certify that to the best of my knowledge and belief all iron and steel products, manufactured products, and construction materials installed in this project by my company and all manufacturers/suppliers contracted with comply with the requirements of section 70914 of the Build America, Buy America Act (BABAA), and 2 CFR Part 184, or are the subject of a waiver approved by the Secretary of the Treasury or designee.

This certification to be submitted upon completion of the project to the contractor.

Name of the Subcontractor (PRINT)

By Authorized Representative (SIGNATURE)

Title

Appendix G: Engineer’s Certification of Compliance with the Requirements of Section 70914 of the Build America, Buy America Act (BABAA) and Other Applicable Federal Regulations and OMB Guidance

DATE: _____

RE: **PROJECT NAME** _____

CITY, STATE _____

CONTRACT NUMBER _____

FUNDED UNDER GRANT NUMBER _____

I hereby certify that to the best of my knowledge and belief all iron and steel products, manufactured products, and construction materials installed in this project comply with the requirements of section 70914 of the Build America, Buy America Act (BABAA) and 2 CFR Part 184, or are the subject of a waiver approved by the Secretary of the Treasury or designee. This certification is not intended to be a warranty in any way, but rather the designer’s professional opinion that to the best of their knowledge the documents comply.

I hereby commit that to the best of my ability all iron and steel products, manufactured products, and construction materials that will be referenced in the Bid Addenda, Executed Contracts, and Change Orders will comply with the requirements of section 70914 of the Build America, Buy America Act (BABAA) and 2 CFR Part 184 or are the subject of a waiver approved by the Secretary of the Treasury or designee.

This letter is to be submitted to recipient/subrecipient prior to authorization of advertisement of bids.

Name of the Engineering Firm (PRINT)

By Authorized Representative (SIGNATURE)

Title

Appendix H: Manufacturer's Certification of Compliance with the Requirements of Section 70914 of the Build America, Buy America Act (BABAA) Preference Requirements for Iron and Steel Products

Date: _____

Company Name: _____

Company Address: _____

Subject: BABAA Certification for Iron and Steel Products

Project Name (include **City, State**):

I, [**Name of Company Representative**], certify that all manufacturing and fabricating processes from the initial melting stage through the application of coatings for the following iron and steel products provided for the project occurred in the United States and are in full compliance with the requirements of section 70914 of the Build America, Buy America Act (BABAA) and 2 CFR Part 184.

Detailed Name of Items, Products and/or Materials:

Quantity	Item Description	Manufacturer Location (City/State)

(Add additional lines if necessary.)

Such processes for BABAA took place at the following location:

(City, State)

X _____

(Authorized Representative Signature)

(Note: *Authorized signature shall be manufacturer's representative not the material distributor or supplier*)

Appendix I: Manufacturer's Certification of Compliance with the Requirements of Section 70914 of the Build America, Buy America Act (BABAA) Buy America Preference Requirements for Manufactured Products

Date: _____

Company Name: _____

Company Address: _____

Subject: BABAA Certification for Manufactured Products

Project Name (include City, State): _____

I, [**Name of Company Representative**], certify that all manufacturing and fabricating processes for the following manufactured products provided for the project were produced in the United States and are in full compliance with the requirements of section 70914 of the Build America, Buy America Act (BABAA) and other applicable federal regulations and OMB guidance.

Manufactured product means articles, supplies, or materials that have been (i) processed into a specific form and shape; or (ii) combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.. If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material¹⁶ under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and under section i and ii of this definition may include components that are construction materials, iron or steel products, or section 70917(c) materials. BABAA-compliant manufactured products are produced in the United States, and the cost of components of the manufactured product that are mined, produced, or manufactured in the United States exceeds 55 percent of the total cost of all components, with total cost calculated as follows:

- (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

¹⁶ Section 70917(c) materials means "cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives."

Detailed Name of Items and/or Products:

Quantity	Manufactured Product Description	Manufacturer Location (City/State)

(Add additional lines if necessary.)

Such processes for BABAA took place at the following location:

(City, State)

X _____

(Authorized Representative Signature)

(Note: *Authorized signature shall be manufacturer's representative not the material distributor or supplier*)

Appendix J: Manufacturer's Certification of Compliance with the Requirements of Section 70914 of the Build America, Buy America Act (BABAA) Preference Requirements for Construction Materials

Date: _____

Company Name: _____

Company Address: _____

Subject: BABAA Certification for Construction Materials

Project Name (include City, State):

I, [**Name of Company Representative**], certify that all manufacturing processes for the following construction materials provided for the project occurred in the United States and are in full compliance with the requirements of section 70914 of the Build America, Buy America Act (BABAA) and 2 CFR Part 184.

Construction materials are defined as articles, materials, or supplies that consist of only one of the following items: non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), fiber optic cable (including drop cable), optical fiber, lumber, engineered wood, or drywall. Minor additions of articles, materials, supplies, or binding agents to one of the construction materials listed above, or the inclusion of one of these listed construction materials as an input to another listed construction does not change the categorization of the construction material. Construction materials do not include items primarily made of iron or steel; manufactured products; cement and cementitious materials; aggregates such as stone, sand, or gravel; and aggregate binding agents or additives. Items that consist of two or more of the listed construction materials that have been combined together through a manufacturing process, and items that include at least one of the listed construction 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.

In accordance with section 70912(6)(C) of BABAA, the term, "produced in the United States" as it relates to construction materials for infrastructure projects funded with federal financial assistance awards, including Direct Component awards means all manufacturing processes for the construction material occurred in the United States.

- a) In accordance with 2 CFR 184.6, the standard for being considered "produced in the United States" for the following construction materials are Non-ferrous metals. All manufacturing processes, from initial smelting to melting through final shaping, coating, and assembly, occurred in the United States.
- b) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent component materials, until the item is in its final form, occurred in the United States.

- c) Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- d) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic, and polymer-based products, or any others.
- e) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- f) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
- g) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- h) Engineered wood. All manufactured processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Detailed Name of Items, Products and/or Materials:

Quantity	Material Description	Manufacturer Location (City/State)

(Add additional lines if necessary.)

Such processes for BABAA took place at the following location:

(City, State)

X _____

(Authorized Representative Signature)

(Note: *Authorized signature shall be manufacturer's representative not the material distributor or supplier*)

Appendix L: Revision History

This table shows changes made to OGCR BABAA Policies and Procedures. Previous versions of the manual are maintained by Treasury OGCR.

OGCR BABAA Policies and Procedures Manual Revision Log			
Revision Date	Page No.	Revision Details	Supervisor Initials
June 2023	All	Initial development of BABAA policies and procedures manual	
November 2023	Varied	Updated to reflect the requirements in the new OMB Memo M-24-02, "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure," dated October 25, 2023, which superseded OMB Memo M-22-11, "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure" dated April 18, 2022 and the requirements of the new 2 CFR Part 184, which went into effect after the original publication of these policies and procedures. As a result, this revision updates the definitions of "infrastructure," "Buy America Preference," "construction materials," "manufactured products", as well as clarifies the determination of cost components for manufactured products, construction material standards, and the cost of iron or steel mill products. The revised version also adds a requirement for Treasury to deny unreasonable cost waivers when the cost differential is due to dumping of foreign products. For a full list of changes, see the preamble to 2 CFR Part 184.	
