**Fact Sheet- Build America Buy America Act Requirement (BABAA)**

The information contained in this fact sheet was derived from the Department of Energy and can be found at this link: [Build America, Buy America | Department of Energy](https://www.energy.gov/management/build-america-buy-america)

Recipients of subawards containing the Buy America Requirement must ensure that absent a waiver none of the funds provided under their award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. The costs of components of a manufactured product are determined in accordance with 2 CFR 184.5; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. See 2 CFR 184.6 for the meaning of “all manufacturing processes” for specific construction materials.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply 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.

This requirement must flow down to all sub-awards, all contracts, subcontracts and purchase orders for work performed under the infrastructure project.

NDEE, as the prime recipient, must maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a DOE waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all sub-awardees, contractors, and vendors to NDEE. NDEE must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

**How can a subaward applicant request a waiver from the Buy America Requirement?**

When necessary, NDEE, as the prime recipient, may apply for, and DOE may grant, a project-specific waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be submitted to NDEE in writing. NDEE will submit the request to DOE, and in accordance with the terms and conditions of the award. DOE may request additional information for consideration of a submitted wavier.  Waiver requests are subject to review by DOE and the Office of Management and Budget (OMB), as well as a public comment period of no less than 15 calendar days. Waiver requests will be made publicly available on DOE’s and OMB’s websites. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOEs final determination regarding approval or rejection of a waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

Answers to frequently asked questions about BABAA can be found at this link: [Frequently Asked Questions about the Buy American Provisions | Department of Energy](https://www.energy.gov/eere/funding/frequently-asked-questions-about-buy-american-provisions#q14).