Build America, Buy America (BABA) Act Implementation Webinar

April 2022
AGENDA

• Domestic Preference History
• Build America, Buy America Act
• BABA Covered Items
• BABA Waivers
• EPA Next Steps
• Questions and Answers
Domestic Preference History
2009 Buy American requirement for SRF

Jan 2014 AIS requirement introduced for SRF

June 2014 AIS permanent for CWSRF and WIFIA

Nov 2021 AIS permanent for DWSRF
BABA

Build America, Buy America Act
The Bipartisan Infrastructure Law (BIL)

Significant new appropriations for supplemental DWSRF and CWSRF funds for 5 years

Amendments to SDWA 1452 and CWA Title VI (the SDWA DWSRF and CWA CWSRF authorizing sections)

Build America, Buy America (BABA) Act

BIL is also referred to as:

Build America, Buy America (BABA) Act

Office of Water
BUILD AMERICA, BUY AMERICA (BABA) ACT

• Included in the Infrastructure Investment and Jobs Act
  • Public Law Number 117-58
  • Title IX, Subtitle A, Part I – Buy America Sourcing Requirements
  • Sections 70911-70917
• Signed November 15, 2021
• Effective date 180 days after enactment: May 14, 2022
MADE IN AMERICA OFFICE (MIAO)

- BIL codifies the MIAO and centralized waiver review process required by Executive Order 14005
- MIAO aims to increase reliance on domestic supply chains
  - Gather government-wide data to support decision-making to make U.S. supply chains more resilient
  - Bring increased transparency to waivers in order to send clear demand signals to domestic producers
- MIAO waiver website:
  - [https://www.madeinamerica.gov/waivers/](https://www.madeinamerica.gov/waivers/)
OMB BABA GUIDANCE

• Released April 18, 2022

• “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure”

WHAT IS BABA?

• “[N]one of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”

• “Project” means:
  • Any activity related to the construction, alteration, maintenance, or repair of infrastructure in the U.S.
COVERED PROGRAMS

• State Revolving Fund (SRF) and Water Infrastructure Finance and Innovation Act (WIFIA) programs
  • Not just for BIL-funded projects
  • Expands existing American Iron and Steel (AIS) domestic preference requirements
  • For typical SRF and WIFIA projects, the vast majority of purchased items will now be covered, including many products that have not been in the past
COVERED PROGRAMS (cont.)

• Adds new requirements to other EPA infrastructure programs
  • Tribes, Territories, and District of Columbia
  • Section 319 Nonpoint Source Implementation Grant Program
  • National Estuary Program
  • Water Infrastructure Improvements for the Nation (WIIN) Grant Program
  • Sewer Overflow and Stormwater Reuse Municipal Grants (OSG)
  • Alaska Native Village (ANV) Grant Program
  • United States – Mexico Border Infrastructure Program
  • America’s Water Infrastructure Act (AWIA) Resiliency Grant Program
  • Congressionally Directed Spending/Community Project Funding
BABA Covered Items
BABA COVERED ITEMS

• Iron and steel + manufactured products + construction materials
• Items should only be classified into ONE of the three categories
• Applies to items consumed in, incorporated into or affixed to an infrastructure project (aka permanently incorporated)
  • Does not apply to items brought to and removed from the construction site prior to the completion of the infrastructure project (e.g., temporary scaffolding)
  • Does not apply to equipment and furnishings that are used at or within the finished infrastructure project (e.g., movable chairs, desks, portable computer equipment)
IRON AND STEEL

• Items that are predominantly iron or steel, unless another standard applies under law or regulation

• All manufacturing processes, from the initial melting stage through the application of coatings, must occur in the U.S.
MANUFACTURED PRODUCTS

• Manufactured in the U.S.

• Cost of components that are mined, produced, or manufactured in the U.S. 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 has been established under applicable law or regulation
CONSTRUCTION MATERIALS

• Includes:
  • Non-ferrous metals
  • Plastic and polymer-based products (including PVC, composite building materials, and polymers used in fiber optic cables)
  • Glass (including optic glass)
  • Lumber
  • Drywall

• Excludes:
  • Items made primarily of iron or steel
  • Manufactured products
  • Cement and cementitious materials
  • Aggregates such as stone, sand, or gravel
  • Aggregate binding agents/additives
All manufacturing processes for construction materials must occur in the U.S.

OMB has issued a Request for Information on the definition of “end product manufactured in the United States” specific to construction materials

BABA Waivers
BABA WAIVER AUTHORITY

• Pursuant to Section 70914(c) of BABA, EPA may waive Buy America preference where EPA finds that:
  • Applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
  • Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
  • Inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”)
BABA WAIVER TYPES

• Project-Specific Waivers
  • MIAO requests review subsequent to 15-day public comment period

• General Applicability (aka National) Waivers
  • MIAO requests review before the public comment period
  • Must be reviewed every 5 years
BABA WAIVER PRINCIPLES

• Time-limited
  • Agencies should identify a short, definite time frame (e.g., no more than 1-2 years)
  • Ensure domestic producers have prompt access to market

• Targeted
  • Waivers that are overly broad will tend to undermine domestic preference policies
  • Broader waivers will receive greater scrutiny from MIAO

• Conditional
  • Agencies are encouraged to issue waivers with specific conditions that support the policies of BABA
EPA Next Steps
EPA NEXT STEPS

• Develop EPA program-specific implementation procedures memo
  • EPA will assess unanswered questions from MIAO guidance
  • Holding listening sessions to help identify these questions and solicit initial public input from all stakeholders
  • Timeline not yet established; will include solicitation of public comment
  • Need to balance the desire for expedient publication with meaningful procedures
ANTICIPATED PROPOSED WAIVERS

• “Adjustment period” public interest waiver
  • For SRF: could be similar to AIS “Plans and Specs” waiver
  • For WIFIA: likely to post for public comment soon
  • For Other OW programs: under consideration

• De minimis public interest waiver
  • Could be similar to AIS; all OW programs considering
  • All projects may use a small amount (~5%) non-domestic products
Other Potential Proposed Waivers

- MIAO BABA guidance lists other public interest waivers for consideration, in the interest of efficiency and to ease burdens for recipients:
  - Minor Components Waiver – similar to existing AIS manufacturer waiver
  - Small Project/Award Threshold – projects under certain $ threshold
  - Program Priority Waivers – EPA may examine other program-level waivers
- Short-term product specific waivers
  - For products not currently manufactured in the U.S.
BABA WEBSITE AND CONTACT INFO

• Website for EPA Office of Water infrastructure programs
  • [www.epa.gov/cwsrf/build-america-buy-america-baba](http://www.epa.gov/cwsrf/build-america-buy-america-baba)
• Email inbox for inquiries and comments: [BABA-OW@epa.gov](mailto:BABA-OW@epa.gov)
• Implementation Procedures
• Waivers for public comment, requests, approvals
• Link to OMB waiver website
• Training and resources
BABA inquiries and comments:

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