

Build America, Buy America Act



Presenter:

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IOWA ECONOMIC DEVELOPMENT AUTHORITY

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Agenda

- BABA Overview
- Key Concepts
- Implementation
- Questions



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What is the Build America, Buy America Act (BABA)?

- Enacted as part of the bipartisan Infrastructure Investment and Jobs Act on November 15, 2021.
- BABA requires that the following materials, in connection with infrastructure projects funded by Federal Assistance, must be produced in the United States:
 - Iron and steel
 - Construction materials
 - Manufactured products

What is the Build America, Buy America Act (BABA)?

- An infrastructure project is defined as any project that includes construction, alteration, maintenance or repair of:
 - Buildings and real property (housing and housing rehab)
 - Utilities (including drinking water and wastewater)
 - Broadband infrastructure
 - Electrical transmission facilities and systems (including EV charging)
 - Transportation infrastructure
 - Dams, ports and harbors and other maritime facilities

Federal Government-wide Law

- BABA applies to ALL Federal financial assistance used for an infrastructure project, including:
 - Grants
 - Loans and loan guarantees
 - Direct assistance
 - Non-cash contributions
 - Cooperative agreements
 - Other financial assistance

Federal Government-wide Law

- BABA is applicable to most HUD programs, including:
 - Community Development Block Grant (CDBG)
 - HOME
 - Housing Trust Fund
 - Many other programs, as well
- BABA does NOT apply to federally funded disaster or emergency assistance from the following programs:
 - CDBG – Disaster Recovery
 - CDBG – Mitigation
 - CDBG – Urgent Needs (OT)
 - CARES Act programs, including CDBG-CV, HOPWA-CV, ESG-CV

Compliance and Implementation

- Iowa Grants (coming)
- CDBG BABA Status Spreadsheet
 - Download the spreadsheet as soon as you are funded

[Instructions](#)
[Project Information](#)
[Item Listing](#)
[BABA Applicability](#)
[Waivers](#)
[Calculations](#)
[+](#)

K30	NOT RECEIVED												
	A	B	C	D	E	F	G	H	I	J	K	L	M
1													
2		CITY/COUNTY NAME: Ainsworth, Iowa											
3		IEDA PROJECT NUMBER: 24-WS-004											
4		PROJECT TITLE: Water Main Improvements											
5								MAXIMUM DIMINIMIS WAIVER =		\$	9,539.44		
6								DIMINIMIS WAIVER GRANTED =		\$	4,076.77		
7								MAXIMUM DIMINIMIS WAIVER REMAINING:		\$	5,462.67		
	LINE #	PRODUCT NAME	MANUFACTURE NAME	CLASSIFICATION TYPE	NUMBER OF UNITS	UNIT PRICE	TOTAL ITEM COST	% OF TOTAL BABAA PRODUCT COST	WAIVER RECEIVED	TYPE OF WAIVER	BABAA CERTIFICATION DOCUMENTATION	WAIVER VALUE	DATE ON-SITE
9	1	4" Water Main, PVC	Northern Pipe Products	CONSTRUCTION MATERIALS	20	5.35	\$ 107.00	0.06%			RECEIVED - COMPLIANT	-	10/10/24
10	2	6" Water Main, PVC	Northern Pipe Products	CONSTRUCTION MATERIALS	4,660	10.85	\$ 50,561.00	26.50%			RECEIVED - COMPLIANT	-	10/10/24
11	3	Ductile Iron Fittings, MJ Restraint, and Cor-Blue Bolt F Star Pipe		IRON AND STEEL	66	356.84	\$ 23,551.44	12.34%			RECEIVED - COMPLIANT	-	10/10/24
12	4	4" Couplings	Romac Industries	IRON AND STEEL	1	600.00	\$ 600.00	0.31%			RECEIVED - COMPLIANT	-	10/10/24
13	5	6" Couplings	Romac Industries	IRON AND STEEL	9	700.00	\$ 6,300.00	3.30%			RECEIVED - COMPLIANT	-	10/10/24
14	6	6" Gate Valve	Mueller	MANUFACTURED PRODUCTS	20	925.00	\$ 18,500.00	9.70%			RECEIVED - COMPLIANT	-	10/14/24
15	7	Fire Hydrant Assembly	Mueller	MANUFACTURED PRODUCTS	9	3,250.00	\$ 29,250.00	15.33%			RECEIVED - COMPLIANT	-	10/14/24
16	8	Water Service Corporation, 3/4"	Mueller	MANUFACTURED PRODUCTS	69	70.00	\$ 4,830.00	2.53%			RECEIVED - COMPLIANT	-	10/14/24
17	12	Water Service Pipe, Type K Copper, 3/4"	Muller Streamline Co.	IRON AND STEEL	2,200	6.20	\$ 13,640.00	7.15%			RECEIVED - COMPLIANT	-	10/1/24
18	13	Water Service Pipe, Type K Copper, 2"	Muller Streamline Co.	IRON AND STEEL	60	20.15	\$ 1,209.00	0.63%			RECEIVED - COMPLIANT	-	10/10/24
19	14	Water Service Pipe, 2" PVC	Charlotte Pipe and Foundry Co.	CONSTRUCTION MATERIALS	160	2.35	\$ 376.00	0.20%	YES	DE MINIMIS	NOT RECEIVED	376.00	10/10/24
20	15	Storm Sewer 12" HDPE	Fratco	CONSTRUCTION MATERIALS	120	4.92	\$ 590.40	0.31%			RECEIVED - COMPLIANT	-	10/31/24
21	16	Storm Sewer 6" HDPE	Fratco	MANUFACTURED PRODUCTS	40	1.97	\$ 78.80	0.04%			RECEIVED - COMPLIANT	-	10/31/24
22	20	Tracer Wire	Kris Tech	MANUFACTURED PRODUCTS	4,500	0.30	\$ 1,350.00	0.71%	YES	DE MINIMIS	NOT RECEIVED	1,350.00	10/10/24
23	21	Tracer Wire Station	AA Manufacturing	MANUFACTURED PRODUCTS	9	20.00	\$ 180.00	0.09%	YES	DE MINIMIS	NOT RECEIVED	180.00	10/10/24
24	22	Yard Hydrant Assembly	Woodford Manufacturing	MANUFACTURED PRODUCTS	1	332.75	\$ 332.75	0.17%	YES	DE MINIMIS	NOT RECEIVED	332.75	10/10/24
25	23	Service Saddles 3/4"	Mueller	CONSTRUCTION MATERIALS	69	95.00	\$ 6,555.00	3.44%			RECEIVED - COMPLIANT	-	10/10/24
26	24	Service Saddles 2"	Mueller	CONSTRUCTION MATERIALS	2	110.00	\$ 220.00	0.12%			RECEIVED - COMPLIANT	-	
27	25	Ground Rod and Clamp	Galvan Industries Inc.	IRON AND STEEL	10	30.00	\$ 300.00	0.16%	YES	DE MINIMIS	NOT RECEIVED	300.00	10/10/24
28	26	Poly Wrap	Sigma Corporation	CONSTRUCTION MATERIALS	440	0.55	\$ 242.00	0.13%	YES	DE MINIMIS	NOT RECEIVED	242.00	10/10/24
29	27	Poly Tape	Christy'	CONSTRUCTION MATERIALS	10	6.00	\$ 60.00	0.03%	YES	DE MINIMIS	NOT RECEIVED	60.00	10/10/24
30	29	Epoxy Tie Bars		IRON AND STEEL	500	4.75	\$ 2,375.00	1.24%			NOT RECEIVED	-	
31	30	Detachable Warning Panel	Ames Tile	CONSTRUCTION MATERIALS	2	105.00	\$ 210.00	0.20%			RECEIVED - MISSING INFO		

Compliance and Implementation

–Contract Language

- Specific contract language regarding BABA must be included in all contracts, including administration, engineering and construction.
- This language is in the management guide.

Compliance and Implementation

–Does BABA apply to your project?

- Is your project a defined infrastructure project? > No? BABA does not apply
- Is your project using a covered Federal program? > No? BABA does not apply
- Does your project use iron, steel, defined construction materials and manufactured products? > No? BABA does not apply
- Yes to all three? Congratulations! BABA applies to your project (*however, you may be eligible for a waiver*).
- Document this process on the spreadsheet to see if BABA applies to your project

Compliance and Implementation

–Certification Process

- Grantees need to certify that all iron and steel, construction materials and manufactured products used on your projects are Made in America.
- Use the spreadsheet to make it easy to track each product's certifications.

Compliance and Implementation

– Certification Process

- Engineer or architect will list all BABA-covered products in the bid packets.
- The winning contractor will then begin submitting manufacturer certifications for each BABA-covered product to the grant administrator. The grantee will be required to keep records of the certification documentation consistent with existing records retention.
- Grantees will take the engineer or architect's list of BABA-covered products and the contractor's corresponding certifications and include that information in the spreadsheet throughout the project.

Compliance and Implementation

–Certification Process

- This certification submittal should begin prior to the start of construction. **No construction activity claim will be approved without certification that the contractor has met BABA requirements for that respective claim.**
- For each construction activity claim, the contractor and engineer will certify that materials used for that respective pay request is BABA-compliant. Grantees will provide that form for the contractor and engineer to certify.
- Grantees, upon submitting the claim to IEDA on Iowa Grants, will then certify that the claim is BABA-compliant. **Grantees should keep the certifications documenting compliance.**

Claim Compliance Certification Form

- Signed by the A/E and Contractor
- Filled out and submitted with EACH claim that there are BABA covered products being reimbursed
- This form is found on our website in the Management Guide

BABA CLAIM COMPLIANCE CERTIFICATION FORM

CLIENT NAME: _____ (hereinafter CLIENT)

PROJECT TITLE: _____ (hereinafter PROJECT)

CDBG PROJECT NUMBER: _____ CDBG CLAIM NO. _____

CONTRACTOR NAME: _____ (hereinafter CONTRACTOR)

PAY APPLICATION NO. _____ AMOUNT: _____

CONTRACTOR CERTIFICATION

I _____ the project manager, superintendent, owner, or authorized representative of the CONTRACTOR which has been contracted by the CLIENT to complete the proposed PROJECT and for which we are now submitting Pay Application No. _____ in the amount of _____ hereby certify that all the iron, steel, construction materials, and manufactured products brought onto the PROJECT site and used on the PROJECT are BABA Compliant as required by the Build America, Buy America Act (BABA) requirements under Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 117-5. I also certify that I have provided the GRANT ADMINISTRATOR with a full and complete list of BABA eligible products to be used on this project and all the required BABA certifications for those items as provided by the manufacturer.

SIGNED: _____ DATE: _____

PRINTED NAME: _____ TITLE: _____

ARCHITECT OR ENGINEER CERTIFICATION

I _____ the architect or engineer for the PROJECT hereby certify that I have reviewed the CONTRACTOR's Pay Application No. _____ and the materials used on this project and agree that the CONTRACTOR has utilized certified BABA compliant iron, steel, construction materials, and manufactured products for the work that is certified as complete as of this pay application.

SIGNED: _____ DATE: _____

PRINTED NAME: _____ TITLE: _____

Compliance and Implementation

–Certification Process

- The absence of a product certification could trigger the waiver request process.
- Grantees job to ensure that each item from the engineer or architect's list has a corresponding and appropriate certification as well as tracking any change orders in the project that will utilize new BABA-covered products.
- If the grantee does not have a certification for a specific product, you can't certify a claim and funding will be held until that certification is documented.

Compliance and Implementation

–Certification Process

- Industries are already providing a letter of certification – many times right on their website.
- It will be the contractor's responsibility to bring these certifications to the grantee.
- Items we're looking for in the certification:
 - Product specific information
 - Location where product was produced or manufactured
 - A company representative's signature / contact information

Sample Manufacturer's Certification

- Product specific information
- Locations of where it was produced
- It is signed and has contact information



RE: BABA Certification

To Whom It May Concern;

This letter is to certify that all PVC pipe manufactured by Diamond Plastics Corporation is compliant with the provisions set forth in the Build America, Buy America (BABA) Act. All PVC pipe is compounded and produced with integral Rieber gaskets at the following locations;

Casa Grande, Arizona
Golconda, Nevada
Grand Island, Nebraska
Lubbock, Texas
Macon, Georgia
Muncie, Indiana
Plaquemine, Louisiana

Items subject to BABA are classified to one of three categories: iron & steel, manufactured products, or construction materials. Guidance from the Office of Management and Budget (OMB) published in Federal Register Vol. 87, No. 144 states "Items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material". This statement can be found on the second page of the published guidance, linked here: [Federal Register Vol. 87, No. 144](#)

PVC by itself is preliminary listed by the OMB as a construction material; however, the combination of PVC with a Rieber gasket render a final product that is classified as a manufactured product. Section 70912(6)(B)(ii) of the BABA Act requires "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...". All of Diamond Plastics PVC pipe contain components produced in the United States that make up more than 55 percent of the final product's cost. The full BABA act can be found at this link: [BABA Act](#).

If we may be of further assistance in this matter, please do not hesitate to call us. For your convenience, please use our toll-free phone 1-800-PVC-PIPE (1-800-782-7473.)

Sincerely,

A handwritten signature in black ink, appearing to read "John Smith", followed by a long horizontal line.

John Smith, Sales Rep



Compliance and Implementation

–Classification

- BABA applies to the following categories of products:
 - Iron and steel
 - Construction materials
 - Manufactured products
- A product cannot be classified in more than one of those categories
- Grantees should classify products based on their status when they arrive on the project site
- Use spreadsheet to classify products

Compliance and Implementation

–Definitions

– Construction Materials are defined as:

- Non-ferrous metals
- Plastic and polymer-based products
- Glass
- Fiber optic cable and optical cable
- Lumber
- Engineered wood
- Drywall

Compliance and Implementation

–Definitions

– Manufactured Products are defined as:

- Articles, materials, or supplies that have been processed into a specific form and shape and or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
- The cost of all the components in a manufactured product from domestic sources must be greater than 55%.

BABA Does Not Apply:

- Tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project.
- Appliances and furnishings, such as dishwashers, refrigerators, movable chairs, desks, and portable computer equipment, which 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.**
- Materials defined as Section 70917(c) materials, meaning cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. Landscaping, such as trees and plants. See Section 70917(c) of the IIA for more information.

Housing BABA Compliance

- Project based
- If your project is 1 to 4 units, it does NOT require BABA compliance
- 5 or more units DOES require BABA compliance
- For housing rehab projects, if activity is UNDER \$250,000, it does NOT require BABA compliance

Project- and Product-Specific Waivers

- There are three available categories for project- and product-specific waivers:
 - Public interest
 - Non-availability
 - Unreasonable cost
- Grantee must work with the project's cognizant agency to submit a waiver
 - The cognizant agency is the agency with the most federal funding in the project
 - This process could take several months / plan for it
 - It could significantly delay your project

BUILD AMERICA BUY AMERICA WAIVER REQUEST

This data collection is for submitting a waiver request to the Build America, Buy America requirements. According to the Build America Buy America Act (BABAA), "none of the funds made available for a Federal Financial Assistance program for infrastructure, including each deficient program, 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."

Waivers are explained in the [Office of Management and Budget Memorandum 22-11](#) and required by the [Infrastructure, Investments and Jobs Act \(IIJA\)](#) sections 70901 through 70952. Each waiver request must provide responses to the form questions, as applicable. Instructions are provided in the next paragraph. Contact your Department of Housing and Urban Development representative for your award or for additional assistance with completing this data collection.

Instructions: The applicant needs to complete questions 1 through 17, sign and certify the form, and email the waiver request to BuildAmericaBuyAmerica@hud.gov.

Required fields are marked with an asterisk (*)

Questions to be Answered by the Grantee

1. Submitter Contact Information

Legal Name *	Unique Entity Identifier (UEI) *	
Address 1 *		
Address 2		
City *	County/Parish	State
Territory/Province	Country *	Zip/Postal Code *

2. Submitter Email *

3. Submitter Phone Number *

Waiver Form to be Submitted to HUD

- Grantee fills out the form when a HUD waiver is needed
- This form is found on our website in the Management Guide



Public Interest Waivers

- A public interest waiver may be available if BABA compliance would be inconsistent with public interest.
 - Unclear what specific public interest issues BABA would cause
- Any waiver requests regarding public interest should:
 - Explain how waiving BABA requirements for the project or product serves the public interest.
 - Demonstrate definite impacts on the community if specific products or materials are used on your project.

Non-Availability Waivers

- A non-availability waiver may be available when a particular product needed for your project is not produced in the United States in sufficient quantities or of a satisfactory quality
- Any waiver requests for non-availability should:
 - Demonstrate that the grantee has conducted market research and adequately considered qualified alternate items.
 - Describe the due diligence performed, including information, quotes and/or responses from manufacturers, distributors or suppliers.

Unreasonable Cost Waivers

- An unreasonable cost waiver may be available when applying BABA will increase the cost of the OVERALL project by more than 25%.
- Any waiver requests for unreasonable costs should:
 - Demonstrate that applying BABA increases the total project cost by more than 25%.
 - Determine the additional cost of BABA-compliant products.
 - Determine the dollar amount to be waived.
 - Demonstrate that no domestic alternatives are available within the project budget.

HUD General Waivers

- There are general waivers which require no formal request to HUD
 - *De Minimis* Waiver
 - Small Grant Waiver
 - Exigent Circumstances Waiver
- Grantees should maintain documentation that demonstrates the applicability of a general waiver to the project – use the spreadsheet.
- These waivers are effective until November 23, 2027

HUD General Waivers

- Small Grant Waiver

- BABA can be waived for a project if the total project cost (including all sources of funding – not just federal) is \$250,000 or less.

- Exigent Circumstances Waiver

- BABA can be waived if a project must be completed immediately due to protect life, ensure safety or prevent the destruction of property

HUD General Waivers

– *De Minimis* Waiver

- BABA can be waived for a portion of the products used in a project if the cost of those products comprises no more than 5% of the total cost of covered products used in the project (not to exceed \$1 million).
- Example: a grantee is using CDBG funding to construct a playground and can find domestically produced products for nearly all the playground equipment, except for one \$20,000 slide. The total cost of the products used in the project is \$500,000.
- The cost of the slide is less than 5% of the total cost of the covered materials so the *De Minimis* waiver can be applied to the slide, therefore BABA does not apply to the slide.
- Note that BABA still applies to the other products used in the project.

Bottom Line

- For project administration purposes, grantees must certify that all iron, steel, construction materials and manufactured products used in your projects are BABA certified.
 - No construction activity claim will be approved until IEDA is satisfied that all appropriate products in your claim are BABA-compliant
- Start with IEDA on any waiver. Ultimately, you will work with the project's cognizant agency to submit a waiver.
- Remember, this is still new! Not every scenario can be foreseen so stay in contact with IEDA with your experiences, any challenges you face and your questions.

Resources and Questions

– Questions? Contact me:

- Chad.Sands@IowaEDA.com
- (515) 348-6208



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