

## BUILD AMERICA BUY AMERICA WAIVER REQUEST TEMPLATE

This template 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, 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 24-02](#) 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. Recipient instructions can be found on pages 9 through 12 of this document. Contact your Federal Agency contact for your award or for additional assistance with completing this template.

**Instructions:** The applicant/recipient/sub-recipient need to complete questions 1 through 16, sign and certify the form, and email/submit the waiver request to the Federal agency contact identified in your Federal award notification.

The Federal agency contact will thoroughly review the Recipient's waiver request, including market research and certifications, collaborating with the to create a detailed waiver package. Specific attention will be given to justifications provided by the Recipient, with any additional information requested as necessary.

If the waiver cannot be recommended, prompt notification to the Recipient is required, including details of due diligence outcomes.

If more space is needed, please attach the file that contains the response. Please use the filename to reference which question corresponds with the file attached.

Required fields are marked with an asterisk (\*)

### Questions to be Answered by the Applicant, Recipient, or Subrecipient

1. **Submitter Type: \***  Applicant  Recipient  Subrecipient

#### 2. Submitter Contact Information

Legal Name \*

Unique Entity Identifier (UEI) \*

Address 1 \*

Address 2

City \*

County/Parish

State

Province

Country \*

Zip/Postal Code \*

#### 3. Submitter First and Last Name\*

4. Submitter Email

5. Submitter Phone Number \*

**6. Describe the infrastructure project description and location, to the extent known. \***

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**7. Total funding, including federal and non-federal shares: \***

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**8. Total estimated infrastructure costs, including all federal and non-federal shares (to the extent known): \***

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**9. Is this waiver for a specific product or a category of products? Check one below: \***

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- a.  Specific Product
- b.  Category of Products
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**10. Listing of Materials, Technical Specifications, and Quantity: \***

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List of iron or steel items, manufactured products, and construction materials proposed to be excepted from BABAA requirements, including name, cost, countries of origin (if known), and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code for each. List each item separately. List the name of the product, how much the product costs, in U.S. dollars, the country or countries of origin, if known, and the relevant PSC and NAICS for each product. Links to manuals that provide the PSC and NIACS codes:

- PSC Codes: <https://www.acquisition.gov/psc-manual>
  - NAICS Codes: <https://www.census.gov/naics/>
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**10.1 Detailed justification as to how the non-domestic item(s) is/are essential to the project:**

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**10.2 Quantity required:**

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**11. Waiver Type \***

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Choose one of the three waiver types listed in this section and only answer the questions applicable to the chosen waiver type.

- **Nonavailability waivers:** Complete questions [11.1.1](#), and [11.1.2](#).
  - **Unreasonable Cost waivers:** Complete questions [11.2.1](#), [11.2.2](#), and [11.2.3](#).
  - **Public Interest waivers:** Complete question [11.3](#).
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**11.1  Nonavailability Waiver**

Applicable responses to the following are required:

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**11.1.1** A description of the due diligence performed by the applicant, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided.

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**11.1.2** If one or more respondent indicated that they could provide a Build America Buy America (BABA) compliant item, but you are requesting the non-availability waiver because the lead time to obtain the BABA compliant item is excessive, indicate below how the difference in lead time between a BABA compliant and non-compliant item is going to cause the project to miss a significant milestone or deadline.

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**11.2  Unreasonable Cost Waiver** (BABA compliance increases total project cost by more than 25 percent)

Applicable responses to the following are required:

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**11.2.1** What is the additional cost of the BABA compliant items, compared to using iron and steel, manufactured products, and construction materials of non-domestic or unknown origin? Attach documentation of prices for BABA compliant and non-compliant items for items to be included in the cost comparison. Attach an additional PDF file if needed. (See page 8 for [attachment instructions](#))

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**11.2.2** What is the additional administrative cost for compliance with the BABA requirements? Attach a certification from the engineer or architect attesting to the actual or expected additional administrative cost. Attach an additional PDF file if needed. (See page 8 for [attachment instructions](#))

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**11.2.3** The BABA requirements will be waived for individual items until the total additional cost of BABA compliance is less than 25 percent of the total project cost. Which items is the applicant requesting to be waived from the BABA requirements to reduce costs below the 25 percent cost threshold?

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**11.3  Public Interest Waiver**

Explain how waiving the BABA requirement for this project or product serves the public interest.

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**12. Additional Waiver Information**

Provide any additional information for the Agency's consideration of the requested waiver.

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**13. Anticipated Impacts \***

Identify any anticipated impacts if no waiver is issued. Attach additional PDF pages if needed.  
(See page 8 for [attachment instructions](#))

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**14. Certifying Official Name: \***

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**15. Certifying Official Signature: \***

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**16. Date of Certification: \***

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## Recipient Instructions:

1. **Submitter Type:** Select a submitter type. Applicant, Recipient or Subrecipient.
2. **Submitter Contact Information:**
  - **Legal Name:** Required. Enter the legal name of the financial assistance award recipient that is seeking a waiver under the award. This is the organization that has registered with the System for Award Management (SAM). Information on registering with SAM may be obtained by visiting [SAM.gov](https://sam.gov).
  - **UEI:** Required. Enter the organization's Unique Entity Identifier (UEI) received from SAM. The UEI is a unique 12 character organization identifier. Information on registering with System for Award Management ([SAM.gov](https://sam.gov)) may be obtained by visiting the [Grants.gov](https://grants.gov) website. If the entity is not required to register in SAM.gov, respond "Exempt from registration in SAM.gov."
  - **Address:** Required. Enter address: **Address 1** (required); **City** (required); **County/Parish, State** (required if country is US); **Province; Country** (required); **9-digit ZIP/Postal Code** (required if country is US). If +4 does not exist or it is unknown for the address, enter "0000".
3. **Submitter First and Last Name:** Provide the first and last name of the person submitting the waiver request.
4. **Submitter Email:** Enter the email of the person submitting the waiver request.
5. **Submitter Phone Number:** Enter the area code and phone number of the person submitting the waiver request. Include the area code, phone number and phone extension if applicable.
6. **Describe the infrastructure project description and location** (to the extent known). The location can be an address (street, city, state, country and postal code) or a description of an area, such as a roadway or tract of land. Global Positioning System (GPS) location information may also be used.
7. **Total Funding, including Federal and non-Federal shares:** Report the total funding amount for the award, in whole dollars. If the entity is contributing non-Federal funds, sometimes known as cost sharing or match, and add that to the Federal funding amount and report the sum of the two figures in the field.
8. **Total estimated infrastructure costs, including all Federal and non-Federal shares** (to the extent known): List the portion of the total award amount that represents construction costs, including any Federal funding being used for this project. If the entity is contributing non-Federal funds, sometimes known as cost sharing or match, add that to the Federal funding amount and report the sum of the two figures in the field.
9. **Is this a waiver for a specific product or a category of products?** Check the box next to Specific Product or Category of products.

Example:

- 9a. **Product waiver:** 8-inch stainless steel valves
- 9b. **Category of products:** all valves on the project.

### 10. Listing of Materials, Technical Specifications, and Quantity

List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from BABAA requirements, including name, cost, country(ies) of origin (if known), and relevant Product Service Code (PSC) and North American Industry Classification System (NAICS) code for each. Please see the instructions below for listing the items. List the name of the product, how much the product costs, in U.S. Dollars, the country or countries of origin, if known, and the relevant PSC and NAICS for each product. Links to manuals that provide the PSC and NIACS codes can be found below.

**10.1 Technical specifications description of items to be waived, if applicable.** Provide the technical specifications for each of the items listed in question 10.

**10.2 Quantity required:** List the quantity required for each item listed in question 10.

- PSC Codes: <https://www.acquisition.gov/psc-manual>
- NAICS Codes: <https://www.census.gov/naics/>

List each item separately.

- “Manufactured Product”: Items that consist of two or more of the listed construction materials below 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.
- “Construction Materials” includes an article, material, or supply— other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives— that is or consists primarily of:
  - non-ferrous metals;
  - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
  - glass (including optic glass);
  - lumber; or drywall.

**11. Waiver type:** Choose one of the three waiver types listed in this section and only answer the questions applicable to the chosen waiver type:

- **Nonavailability waivers:** Complete questions 11.1, 11.1.1, and 11.1.2.
- **Unreasonable Cost waivers:** Complete questions 11.2, 11.2.1, 11.2.2, and 11.2.3.
- **Public Interest waivers:** Complete question 11.3.

Provide sufficient information related to the specific request.

**11.1 Nonavailability Waiver:** Check this box if seeking a Nonavailability waiver. By choosing this selection, this means you are unable to obtain American made iron, steel, manufactured products, or construction materials for an infrastructure project. You are requesting the Federal agency to waive the application of the Build America Buy America domestic preference. You must demonstrate market research, which may be accomplished with assistance from the Federal agency, and adequately considered qualified alternate items, products, or materials.

Applicable responses to the following are required:

- 11.1.1** A description of the due diligence performed by the applicant, engineer/architect, or contractor, including names and contact information of the manufacturers, distributors, or suppliers contacted for quotes (minimum 3), and the responses provided.
- 11.1.2** If one or more respondent indicated that they could provide a BABA compliant item, but you are requesting the non-availability waiver because the lead time to obtain the BABA compliant item is excessive, indicate below how the difference in lead time between a BABA compliant and non-compliant item is going to cause the project to miss a significant milestone or deadline.

**11.2 Unreasonable Cost.** (BABA compliance increases total project cost by more than 25 percent). This checkbox is chosen when the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the total project cost to the overall project by more than 25 percent. You are requesting the Federal agency to waive the application of the BABAA domestic preference. You must provide documentation to the Federal agency that no domestic alternatives are available within the cost parameter. This may be accomplished with assistance from the Federal agency.

Applicable responses to the following are required:

- 11.2.1** What is the additional cost of BABA compliant iron and steel, manufactured products, and construction materials, compared to items of non-domestic or unknown origin? Attach documentation of prices for BABA compliant and non-compliant items for items to be included in the cost comparison. Such documentation may include quotes from suppliers or bid tabulations from bid actions which solicited both BABA compliant and non-compliant products. Attach an additional PDC file if needed.
- 11.2.2** What is the additional administrative cost for compliance with the BABA requirements? Attach a certification from the engineer or architect attesting to the actual or expected additional administrative cost. Attach an additional PDF file if needed.
- 11.2.3** The BABAA allows for a waiver in cases where “the 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.” If you are requesting a waiver under this requirement, we will waive items until the excess costs due to BABA are less than 125 percent of the non-BABA project. The BABA requirements will be waived for individual items until the total additional cost of BABA compliance is less than 25 percent of the total project cost.

For example, the project has three items which each cost \$20 for the non-domestic item. The equivalent domestic item costs \$30. Total project cost includes those items, along with \$40 of labor and soft costs. (“Soft costs” is a construction industry term or contractor accounting term for an expense item that is not considered direct construction cost. Soft costs include architectural, engineering, financing, and legal fees, and other pre- and post-construction expenses.) In this example, administration of BABA adds \$4 to soft costs. The total cost of the non-BABA project would be \$100 (3 x \$20 + \$40) and the BABA project is \$134 (3 x \$30 + \$44), a 34 percent increase. Waiving BABA requirements for one of the three items would decrease total project cost to \$124, which is less than 25 percent cost threshold.

Item		
Construction contracts		
Items procured outside of construction contract		
Architecture/engineering services		
Subconsultants		
Land and right-of-ways		
Legal services		
Funds administration		
Construction management		
Construction contingency		
Interest		
Equipment		
Refinancing		
Other soft costs		
<b>Total Project Cost</b>	<b>A</b>	<b>B</b>

1) Percentage increase in total project cost due to BABA (= 100 percent multiplied by (A-B)/B):

2) Dollar amount to be waived (= A – 1.25 multiplied by B):

Indicate which items the applicant wishes to waive from the BABA requirements to bring the total costs below 125 percent of the non-BABA total project cost. Items should be selected judiciously so that the total cost savings of using non-BABA items exceeds the amount in Row 2 by the smallest practicable amount. Only items submitted in response to question 10.2.1 are eligible for a waiver (it is not expected that soft costs will be affected significantly by the waiver).

**11.3 Public Interest.** Explain how waiving the BABA requirement for this project or product serves the public interest. By choosing this checkbox, you will explain how waiving the BABA domestic preference for this project or product serves the public interest. You can demonstrate definite impacts on the community if specific items, products or materials are not utilized in an infrastructure project. You are requesting the Federal agency waive the application of the BABA domestic preference because the domestic content preference would be inconsistent with the public interest. You will ensure this waiver is used judiciously and construed to ensure the maximum utilization of goods, products, and materials produced in the United States.

12. **Waiver Additional Information:** Indicate any additional information for the Agency’s consideration of the requested waiver.

13. **Anticipated Impacts:** Identify any anticipated impacts if no waiver is issued. Provide a narrative that will explain the impact to the award, project, or the public should the waiver be denied. Attach additional PDF pages if needed.

14. **Certifying Official Name:** The name of the person who is certifying the waiver request.

15. **Certifying Official Signature:** The signature of the person who is certifying the waiver request will sign this section.

16. **Date of Certification:** Provide the date (MM/DD/YYYY) that the signature was provided.