

BUILD AMERICA BUY AMERICA WAIVER REQUEST DATA COLLECTION

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 program¹, 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. [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 data collection.

Instructions: The applicant/recipient/subrecipient 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 will complete questions 1A through 11A. The Federal agency will review and determine to approve or not approve the waiver request.

If additional space is needed, see [attachment instructions](#) on page 8.

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 *

¹ See IIJA, § 70913(c) for description of the term “deficient program.”

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

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

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

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

- a. Specific Product
 - b. Category of Products
-

10. Listing of Materials, Technical Specifications, and Quantity: *

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 NAICS codes:

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

10.1 Technical specification descriptions of items to be waived, if applicable.

10.2 Quantity required:

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 [11.1.1](#), 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](#).
-

11.1 Nonavailability Waiver

Applicable responses to the following are required:

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.

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.

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

Applicable responses to the following are required:

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](#))

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](#))

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?

11.3 Public Interest Waiver

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

12. Additional Waiver Information

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

13. Anticipated Impacts *

Identify any anticipated impacts if no waiver is issued. Attach additional PDF pages if needed.

(See page 8 for [attachment instructions](#))

14. Certifying Official Name: *

15. Certifying Official Signature: *

16. Date of Certification: *

Questions to be Answered by the Federal Agency

All fields are required and must be filled out.

If additional space is needed see [attachment instructions on page 8](#).

Federal [agency instructions](#) can be found on pages 13 and 14 of this document.

1A. Federal Awarding Agency

2A. Federal Financial Assistance Program Listing Number

3A. Federal Financial Assistance Program Title

4A. Federal Awarding Agency Point of Contact

First Name

Last Name

Email

Phone

5A. FAIN and Federal Awarding Agency Organizational Information

Provide the Federal Award Identification Number (FAIN) (if available) and Federal Agency name, subcomponent name (if known), and the CGAC code (e.g., Common Government-wide Accounting Classification (CGAC) Agency Code).

Enter the Federal Agency name, and subcomponent name, if known, and the CGAC code. **USDA's CGAC code is 012. For example, an appropriate response would be U.S. Department of Agriculture, Forest Service, CGAC 012.**

FAIN

Federal Agency name, and subcomponent name, if known, and the CGAC code

6A. Waiver Level

Select one of the four waiver levels:

Project

Award

Program

Agency

7A. Is this a general applicability waiver?

Yes

No

8A. Agency Summary and Determination

Provide an agency summary and determination regarding the waiver request.

9A. Agency Waiver

This response should be a narrative and include all necessary information to support the justification for a waiver. To avoid the need for a project-specific waiver, a justification may cite, if applicable, the absence of any BABA compliant bids received in response to a solicitation.

(See page 8 for [attachment instructions](#)).

10A. Public Comments

Provide any relevant comments received through the public comment period. This section is to be filled out after the waiver has been posted to the Agency's BABA Website. For example, the USDA website is found at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.

11A. Waiver Timeline

Select the timeline you are requesting for the waiver of the BABAA domestic sourcing requirements.

For the entire period of performance of the grant in which the infrastructure projects will occur.

OR

For a limited time during the period of performance of the grant. We request a waiver of the identified BABAA domestic sourcing requirements from [] to [] date.

File Attachment Instructions

Attach PDF files if additional space is needed to answer any of the questions in this form. Indicate which questions the attachment addresses.

To attach a file, select the “Attach File” button to open the Attachment Panel in Adobe Reader or Acrobat.



Drag and drop your attachments to the panel or select the “Add a New Attachment” button from the left Attachment panel in Adobe reader or Acrobat.

Please indicate which questions the attachments address by naming your file with the question number (i.e., Question 9A.pdf).

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 NAICS 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 PDF 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	BABA cost	Non-BABA cost
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		
Total Project Cost	A	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.

Federal Agency Instructions:

- 1A. Provide the Federal awarding agency.
- 2A. Provide the Federal financial assistance program listing number.
- 3A. Provide the Federal financial assistance program title.
- 4A. Provide the first name, last name, email, and phone number of the Federal awarding agency point of contact.
- 5A. Provide the Federal Award Identification Number (FAIN) (if available) and the Federal awarding agency organizational information (e.g., Common Government wide Accounting Classification (CGAC) Agency Code). Enter the Federal Agency name, and subcomponent name if known, and the CGAC code. **USDA's CGAC code is 012. For example, an appropriate response would be U.S. Department of Agriculture, Forest Service, CGAC 012.**
- 6A. Indicate waiver level. Project, Award, Program or Agency.
- 7A. Is this a general applicability waiver? Indicate if this is a general applicability waiver or not.
- 8A. Agency summary and determination regarding the waiver request. Provide a narrative summarizing the Federal Agency's determination of the waiver request. It should include the reasons for approving or disapproving the waiver.
- 9A. Agency waiver: In an attempt to avoid the need for a project specific waiver, such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation. This should be a narrative and include all necessary information to support the justification for a waiver. This may be submitted as an attachment as a PDF file.
- 10A. Any relevant comments received through the public comment period. This is to be filled out after the waiver has been posted to the Agency's Buy American Website. For example, the USDA website if found here: <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>.
- 11A. Select the timeline you are requesting for the waiver of the BABAA domestic sourcing requirements:

For the entire period of performance of the grant in which the infrastructure projects will occur.
OR
For a limited time during the period of performance of the grant. We request a waiver of the identified BABAA domestic sourcing requirements from [XX/XX/XXXX] only until [XX/XX/XXXX] date. After the identified end date, if there is a need for another waiver for the infrastructure projects, a new Build America Buy America Waiver Request form must be completed and submitted to the Federal agency. The waiver time frame cannot exceed the approved period of performance of the grant unless there is an approved grant extension by the Federal awarding agency.

Public Posting of Waiver Request Information

The BABAA domestic sourcing requirements waiver authority generally requires the Federal awarding agency to post this waiver information for a period of public comment and review. The Department will not publicly post information considered to be personally identifiable information (PII), including signatures and specific contact information such as an email address and phone number. However, all other information contained in this form, along with any supporting documentation, may be publicly posted so that the public has adequate information to comment on your requested waiver of the BABAA domestic sourcing requirements. If you feel that some of the information contained in this waiver request is “proprietary information” and do not want this information disclosed, please follow the instructions in “Submission of Proprietary Information”, below. Please note that your designations of exempt material are not binding on the Department.

Submission of Proprietary Information

FOIA exempts from mandatory disclosure any “trade secrets or commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. 552(b)(4) (Exemption 4). In accordance with Exemption 4, the Department will maintain as confidential any documents submitted by you, or prepared by the applicant or grantee, that are both customarily and actually treated as private by the applicant or grantee, or closely held and not publicly disseminated. If you feel that some or all of this submission falls within the scope of Exemption 4 and is entitled to confidential treatment, you must indicate the specific information the applicant or grantee considers proprietary in a cover attachment to this form. Please note that your designations of exempt material are not binding on the Department.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0028. Public reporting burden for this collection of information is estimated to average 10 hours per response, including time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is *required to obtain or retain benefit* (with section 70914 of the [Build America Buy America Act \(Pub. L. No. 117-58 §§ 70901-70952\)](#)). If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application, or survey, please contact your assigned program officer directly.

sandip shirawala