

FREQUENTLY ASKED QUESTIONS

Build America Buy America Act

Rules and Regulations under the Infrastructure Investment and Jobs Act

The Build America Buy America Act (BABA), commonly referred to as “Buy America,” is a set of regulations and policies to promote the use of American-made products and materials in certain federal infrastructure projects. These requirements support domestic manufacturing, stimulate economic growth, and create jobs in the United States.

Below is a list of common questions and relevant considerations related to Buy America for potential applicants to the Oregon Department of Energy Section 40552 Grant, Energy Efficiency and Conservation Block Grant, which is funded by the U.S Department of Energy through the Infrastructure Investment and Jobs Act (IIJA).

1. What are the primary terms under Buy America?

Infrastructure projects funded through IIJA EECBG Funding will need to meet two primary Buy America Requirements:

1. All iron, steel, and manufactured products used in the infrastructure work are produced in the United States.
2. All construction materials used in the infrastructure work are manufactured in the United States.

2. What IIJA-funded projects do Buy America requirements apply to?

Whether Buy America requirements apply to a specific project depends on three factors:

1. The recipient’s entity type. All subawards, contracts, subcontracts, and purchase orders for work performed under a proposed IIJA project will conform to the terms of the *prime* award from which they flow.
2. Whether the work involves “infrastructure,” as defined by Section 70914 of the IIJA.
3. Whether the infrastructure in question is publicly owned or serves a public function.
 - a. Considerations involve whether the project is publicly owned and operated, privately operated on behalf of the public, or is a place of public accommodation, as opposed to a project that is privately owned and not open to the public. Projects with the former qualities have greater alignment with the definition of “infrastructure,” while projects with the latter quality have fewer. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use, for example, would not constitute an infrastructure project.

Buy America requirements apply to any project whose Prime Recipient is a non-Federal, not-for-profit entity, such as a State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization. Because the Oregon Department of Energy is a non-federal entity and would be considered the Prime Recipient under the proposed 40552 EECBG Funding, Buy America requirements will apply to all subawards, contracts, subcontracts, and purchase orders for work performed under this funding.

3. What components of your project do the Buy America requirements apply to?

Buy America requirements apply to iron, steel, manufactured products, and construction materials that are consumed in, incorporated into, or affixed to an infrastructure project.

Buy America requirements *do not* apply to:

1. Tools, equipment, and supplies, such as temporary scaffolding that were brought to the construction site and removed at or before the completion of the infrastructure project.
2. 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.

4. How does Section 70914 of the IIJA define “infrastructure”?

The term “infrastructure” includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Agencies should treat structures, facilities, and equipment that generate, transport, and distribute energy — including electric vehicle (EV) charging.

5. What is the definition of “construction materials”?

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:

1. Non-ferrous metals
2. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)
3. Glass (including optic glass)
4. Lumber
5. Drywall
6. Coatings (paints and stains)
7. Optical fiber
8. Clay brick
9. Composite building materials
10. Engineered woods products

For construction materials, this means that all manufacturing processes for the construction material occurred in the United States.

6. What is the definition of “manufactured products”?

Items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sandy, or gravel; or aggregate binding agents or additives.

For manufactured products, this mean that (a) the manufactured product was manufactured in the United States and (b) that 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.

7. When is an IJJA-funded project exempt from Buy America?

Buy America requirements do not apply to any IJJA-funded U.S Department of Energy projects in which the Prime Recipient is a for-profit entity.

For example, if you receive IJJA funding as a subrecipient of ODOE and as a subrecipient of another, separate IJJA-funded for-profit entity, Buy America requirements will apply only to the portion of funding received through ODOE.

It is also possible for the head of a federal agency to agree to waive Buy America requirements in specific instances.

8. Under what conditions can Buy America requirements be waived?

The head of a federal agency may waive the application of a Buy America preference under an infrastructure program in instances where:

1. Applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”)
2. 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”)
3. 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 (an “unreasonable cost waiver”).

9. How would an applicant submit a Buy America waiver?

If any subrecipient or contractor is interested in waiving Buy America requirements, ODOE must submit a written waiver request to US DOE on your behalf. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. US DOE’s decision concerning a waiver request is not appealable. US DOE may request additional information, but at a minimum a written waiver request should include:

1. Waiver type (Public Interest, Non-Availability, or Unreasonable Cost)
2. Applicant/Recipient name and Unique Entity Identifier (UEI)
3. Award information (Federal Award Identification Number, Assistance Listing number)
4. A brief description of the project, its location, and the specific infrastructure involved
5. Total estimated project cost, with estimated federal share and recipient cost-share breakdowns
6. Total estimated infrastructure costs, with estimated federal share and recipient cost-share breakdowns
7. List and description of iron or steel item(s), manufactured goods, and construction material(s) the applicant or recipient seeks to waive from Buy America requirement, including name, cost, country(ies) of origin and relevant PSC and NAICS code for each
8. A detailed justification as to how the “non-domestic” item(s) is/are essential to the project

9. A certification that the applicant or recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers
10. A justification statement – based on one of the applicable justifications outlines above -as to why the listed items cannot be procured domestically, including due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the applicant or recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-complaint bids received for domestic products in response to a solicitation
11. Anticipated impact to the project if no waiver is issued

If you need a waiver for your project based on one of the above exceptions, you will need to apply for and receive approval of the waiver **BEFORE** you begin your project or sign a contract with your contractor, and/or any time during the project when it becomes apparent that a waiver is necessary. (If you have obligated your funds, you will also need to include an explanation of why the waiver request was submitted late.) **Contact ODOE program staff before you begin the waiver process.**

If you determine you need to seek a waiver, you will be completing a US DOE waiver form for submission. The forms require a significant amount of research and effort. The waiver should be submitted to ODOE program staff, who will work with Oregon’s Project Officer at the U.S. Department of Energy headquarters to process the waiver in a timely manner. Processing the request could take up to 90 days. Do not start your project before clearance.

Mail the Buy American Waiver form to:
 Oregon Department of Energy
 550 Capitol Street NE, 1st Floor
 Salem, OR 97301
 Attn: Buy American Waiver Request

Or scan the completed form and attachments and e-mail to the ODOE program staff.

Note: Please use a separate waiver form for each type of material/manufactured good you are requesting a waiver for the Buy American requirement.

10. What are the Buy America reporting requirements?

Recipients must maintain certifications or equivalent documentation for proof of compliance that eligible materials 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 the recipient (ODOE).

11. How will Buy America affect my application?

Buy America is an ongoing requirement of projects that include public infrastructure funded through this program, and subrecipient applications to ODOE that can demonstrate an early commitment and thoughtful plan for implementing the required Buy America requirements as part of their project design will be necessary. Potential subrecipients are encouraged to consider how they will procure U.S iron, steel, manufactured goods, and construction materials within the project timelines and reference this strategy within their application.

12. Additional Resources



Any potential applicants interested in finding more information regarding Build America Buy America requirements can review the following information:

1. [Administrative and Legal Requirements Document \(ALRD\)](#)
The link above is the ALRD Page for IIJA Section 40552 Energy Efficiency and Conservation Block Grant.
2. [Made in America](#)
The link above is to the Made in America Office, who must review any waiver requests.
3. [White House Build America, Buy America](#)
The link above is the White House's federal financial assistance resource.
4. [U.S. Department of Energy FAL-2023-01](#)
The link above is the federal assistance regulations regarding Buy America.
5. [Office of Management and Budget M-24-02 Implementation Guidance](#)
The link above is the White House's implementation guidance regarding Buy America.

This document is intended to be for informational purposes only. If there is any conflict between information in this document and the awards agreement, the language in the awards agreement will prevail.