



Build America, Buy America Requirements

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General Requirements

- Requires that all iron and steel, manufactured products, and construction materials used in a HUD-funded project must be produced in the United States.
- Applies to projects awarded HOME Investment Partnerships (HOME) Program and National Housing Trust Fund (NHTF) Program funding that was obligated to Minnesota Housing by HUD on or after August 23, 2024.
 - Obligation is the point at which HUD is legally committed to make funds available to a grantee and should not be confused with the date on which a grantee commits funds to a specific project.

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Products and Materials

Applies to all iron and steel, construction materials, and manufactured products used in a HUD-funded project as defined in [2 C.F.R. 184.3](#).

Iron and Steel Products

Articles, materials, or supplies that consist wholly or predominantly of iron or steel, or a combination of both. Iron and steel content costs must exceed 50% of the total cost of all its components.

Construction Materials

Articles, materials or supplies that consist of only one of these items: Non-ferrous metals, plastic and polymer-based products, glass, fiber optic cable, optical fiber, lumber, engineered wood, drywall.

Manufactured Products

Articles, materials or supplies that have been either: processed into a specific form or shape or combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. Cost of domestically manufactured components must be greater than 55% of the total cost.

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Products and Materials

The following conditions apply when determining whether these products and materials are produced in the U.S.:

Iron and steel

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

Construction materials

All manufacturing processes must occur in the U.S.

Manufactured products

The final manufacturing process must occur in the U.S. and the cost of components mined, produced, or manufactured in the U.S. must be greater than 55%.

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Materials Not Subject to BABA

- Section 70917(c) materials: Cement, cementitious materials, aggregates (such as stone, sand, or gravel), and aggregate binding agents or additives.
 - However, section 70917(c) materials can be considered components of manufactured products if they are processed into a specific shape or form before being delivered to a work site.
- “Removable and/or movable” objects that are not an integral part of the structure or permanently affixed to the project.
 - Building appliances (e.g., microwaves, refrigerators, dishwashers, AC units, etc.), furniture, or equipment (e.g., movable chairs, desks, portable computer equipment, etc.).
- Tools, equipment, and supplies (such as temporary scaffolding) brought to a construction site and removed at or before the completion of the project.

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Compliance Requirements

- Include BABA provision language in project documents;
- Identify and classify all products and materials necessary for project and determine their cost;
- Conduct market research to identify domestically made products and materials;
 - Retain documentation of all market research to provide to Minnesota Housing if waiver requests are needed.
- Collect documentation certifying products and materials were made in the U.S.;
- Collect and provide documentation needed for all waivers.

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Prior to Submitting the 75-90% Contract Documents

- Identify all products and materials needed for the project.
- Classify all products and materials needed for the project as iron and steel products, construction materials, or manufactured products.
- After identifying all products and materials subject to the BAP, identify domestically available products.
- Include in the project specifications:
 - Minnesota Housing's required BABA provision language;
 - The definition of domestically produced products/materials for iron and steel, construction materials, and manufactured products;
 - BABA certification requirements for American-made products;
 - Information on domestic suppliers and manufacturers already identified.

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Market Research to Identify Domestic Products

- Adequately consider qualified alternate items, products, or materials, and provide research supporting no alternative technology.
- Contact a **minimum of three** manufacturers or suppliers to determine if a BABA-compliant material is available in sufficient quantity and satisfactory quality.
 - *Needed only when a product or material cannot be found domestically and will require a product-specific waiver.
- Engage with Enterprise MN (local MEP) and/or NIST (national MEP), HUD and the Made in America Office (MIAO), in addition to trade associations, local manufacturers, and local stores, to identify products that are made in America as needed.

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Bidding a Project

- Alternate product and pricing scenarios should be collected for materials that are not BABA compliant.
 - Identify the specified products/materials that are not BABA-compliant and then allow add/alternates for these non-BABA-compliant materials.
 - If alternate BABA-compliant materials cannot be used on the project, document reason, all market research and start waiver process.
 - If no alternates are available, document all market research and start waiver process.

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Prior To and During Construction

- Collect certification documentation for all materials subject to BABA **prior to** procurement commitment.
- Acceptable certification documentation includes, but is not limited to:
 - Copy of the label indicating the product was made in the United States
 - Copy of the product description or technical specifications that provides sufficient detail to conclude that the Covered Materials comply with BABA
 - Certificate or other documentation from the manufacturer demonstrating that the Covered Materials comply with BABA
 - Signed certification from the contractor of a project certifying compliance with BABA
 - Signed certification from the manufacturer of the Covered Materials certifying compliance with BABA
- Track when a change order is needed (when a specified BABA compliant product is no longer available) and notify Minnesota Housing as soon as possible.

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General Waivers

- The **De Minimis Waiver** gives grantees the flexibility to waive the BAP for a 5% de minimis portion of BABA materials used in a project if domestically produced equivalents cannot be identified, up to \$1 million.
 - To determine the de minimis limit for a project, first calculate the total cost of Covered Materials (iron and steel, construction materials, and manufactured products) used in the project. Then, find 5% of that total.
 - BABA requirements will still apply to the rest of the materials used in the project.
 - HUD recommends calculating the De Minimis Waiver limit and applying it strategically before applying for a product- or project-specific waiver.

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Product/Project Specific Waivers

- **Nonavailability**
 - Materials are not available in sufficient quantities or satisfactory quality.
- **Unreasonable Cost**
 - Domestic materials will increase the entire project cost by more than 25%.
- **Public Interest**
 - If applying the BAP would be inconsistent with public interest.

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Product/Project Specific Waiver Process

1. The external project team will complete and submit the BAP Project- and Project-Specific Waiver Form to Minnesota Housing staff along with all supporting documentation and market research information.
2. Federal Programs staff will submit all waivers on behalf of the project owner via HUD's online BABA waiver form.
3. HUD reviews the waiver and then submits to the Made in America Office (MIAO) for review.
4. The project team provides any additional information or documentation requested by HUD and/or MIAO throughout the review process.
5. HUD and MAIO publish the waiver for a 15-day public comment period.
6. MIAO reviews any comments received and issues final determination.

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Product/Project Specific Waiver Documentation

- Results of a supplier scouting search conducted by local MEP or another supplier scouting service.
- Copies of web searches used (for example, PDF/JPEG copies of web pages showing search terms and results including sources considered, eliminated, and chosen for further research).
- Copies of email, fax, or mail correspondence with Covered Materials manufacturers or suppliers.
- Records of phone communications with Covered Materials manufacturers or suppliers, including:
 - Dates and times of phone calls
 - Phone numbers used
 - Whether the phone communication was successful in reaching manufacturer or supplier staff who were able to respond to questions about BABA compliance, or whether the attempt at communication was unsuccessful (for example, left a message, phone line was busy, or phone line was disconnected)
 - If the phone communication resulted in reaching someone, the name of the person contacted
 - Notes describing the substance of the conversation (for example, manufactured product is assembled in U.S., but the manufacturer is uncertain whether 55% of the value of the materials/components are sourced in the U.S.)

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Record Keeping

- Maintain the following documentation, in accordance with [2 C.F.R. 200](#), and have available to submit to Minnesota Housing when necessary:
 - Project documentation showing that BABA provision language is included in all required project specifications, construction contract, subcontracts, agreements for services, procurement contracts, and purchase orders.
 - List of products and materials subject to BABA, along with the categorization of these products and materials.
 - Documentation showing the cost of all products and materials subject to BABA.

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BABA Due Diligence

- Needed Prior to Releasing Project for Bidding:
 1. BABA – Architect Compliance Checklist
 2. BABA – Contractor Compliance Checklist
 3. BABA – Owner Compliance Checklist
- Needed for BABA Waivers:
 1. BABA De Minimis Waiver Form
 2. BABA Project/Product Specific Waiver Form
- Needed During Procurement/Construction:
 1. Product documentation certifying BABA compliance
 2. Updated BABA De Minimis Waiver Form (as needed)
- Needed After Construction:
 1. Final BABA Compliance Certification Form

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