

## **Build America, Buy America Act Sample Language for Inclusion Into Contracts (to include loans, grants, and loan guarantee documents)**

### Sample Language for Inclusion into Recipient Contracts

*Domestic Preference Requirements for Federal Financial Assistance to Non-Federal Entities.* Federal Financial Assistance to Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA), under Title IX of the Infrastructure Investment and Jobs Act, Pub. L. 177-58. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at [USDA Buy America Waivers for Federal Financial Assistance | USDA](#).

### Sample Language for Inclusion into Professional Services Agreements

#### Short Form for Entities Experienced Working with Domestic Preference Requirements

This agreement is for professional services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58. While professional services are not subject to BABAA, the Provider understands that they are responsible for ensuring that, absent a waiver by the [name of Federal Agency], Provider shall not approve for use in this project, any iron, steel, manufactured products, or construction materials unless such materials have been produced in the United States. Provider shall obtain all necessary compliance certificates for work that is within provider's scope of work. Failure to do so shall be a default under this agreement. Guidance on complying with BABAA is outlined by the Office of Management and Budget's Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022.

#### More Detailed Form for Entities Less Experienced Working with Domestic Preference Requirements

##### *Add to main body of agreement:*

This agreement is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget's Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022.

*Add to description of services:*

Opinions of total project costs and revisions thereof should reflect compliance with BABAA requirements.

Determine and certify that to the best of Provider's knowledge and belief all iron and steel products, manufactured products, and construction materials referenced in any technical analysis/report; the plans, specifications, and bidding documents; any bid addenda; and change orders comply with all federal requirements, including BABAA.

Review and approve or take action with respect to shop drawings, samples, and other required Contractor submittals, including applications for payment, to ensure compliance with BABAA.

Review substitutes and "or equals" for conformity with contract conditions, [insert name of Agency] regulations, and BABAA requirements.

Obtain and review manufacturers' and contractors' certifications on compliance with BABAA requirements and maintain copies of certifications in project files.

Assist Owner, if needed, in due diligence related to any BABAA waiver request.

Sample Language for Inclusion into Construction Contracts

**Advertisement for Bids**

This agreement is for services related to a project that is subject to the Build America, Buy America Act (BABAA) requirements under Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget's Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022.

**Instructions to Bidders**

Any request for substitute or "or equal" shall include the Manufacturer's Certification of compliance with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58.

If the Instructions include a Federal requirements section, include the following: BABAA requirements apply to this project.

**Bid Form**

Bidder's representation section: Bidder is familiar with all laws and regulations that may affect cost, progress, and performance of the work, including BABAA requirements.

## **General or Supplemental Conditions**

### *Definitions section:*

Build America, Buy America Act (BABAA) – Requirements instituted by the Bipartisan Infrastructure Law of 2021 mandating domestic preference that all iron and steel, manufactured products, and construction materials are produced in the United States.

Construction Materials – Those articles, materials, 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 are or consist primarily of: non-ferrous metals, plastic and polymer-based products, glass, lumber or drywall.

Manufactured Product – Items assembled out of components, or otherwise made or processed from raw materials into finished products. Manufactured products must be manufactured (assembled) in the United States, and the cost of components that were mined, produced, or manufactured in the United States must be greater than 55 percent of the total cost of all components of the project.

Manufacturer's Certification – Documentation provided by a Manufacturer, certifying that the items provided by Manufacturer meet the domestic preference requirements of BABAA.

### *Contractor's Responsibilities section:*

All products must meet BABAA requirements.

Contractor shall include Manufacturer's Certification for BABAA requirements with all applicable submittals. If a specific manufacture is used in the bidding, a statement that Manufacturer will comply with BABAA must be included with the bid submission. Contractor shall comply with BABAA requirements, including coordination with manufacturers, distributors, and suppliers to correct deficiencies in any BABAA documentation.

Engineer/Architect approval of shop drawings or samples shall include review of BABAA documentation.

Contractor shall certify upon completion that all work and materials have complied with BABAA requirements.

For any change orders, Contractor shall provide BABAA documentation for any new products or materials required by the change.

Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work. Contractor should ensure that Engineer/Architect has an approved Manufacturer's Certification or waiver prior to items being delivered to the project site.

By submitting an application for payment, based in whole or in part on furnishing

equipment or materials, Contractor certifies that such equipment and materials, to contractor's knowledge, are compliant with BABAA requirements.

*Federal Requirements* section:

Domestic Preference: Iron and steel products, Manufactured Products, and Construction Materials used in this project comply with the Build America, Buy America Act (BABAA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 117-58.