



ENERGY AND
ENVIRONMENT CABINET

IMPLEMENTING
BUILD AMERICA,
BUY AMERICA
DOMESTIC PREFERENCE REQUIREMENTS

AN AML GUIDE FOR CONTRACTORS

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1. INTRODUCTION

THE BUILD AMERICA, BUY AMERICA ACT

The [Bipartisan Infrastructure Law \(BIL\)](#) (Public Law No. 117-58), also known as the Infrastructure Investment and Jobs Act, was signed into law on November 15, 2021. This legislation includes the Build America, Buy America (BABA) Act, §§ 70901-27. BABA requires all agencies, including Abandoned Mine Lands (AML), to ensure by May 14, 2022, that no federal financial assistance is provided for any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States *“unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.”*

On August 23, 2023, the Office of Management and Budget (OMB) issued a Notification of Final Guidance revising title 2 of the Code of Regulations (“CFR”) to add a new [part 184](#) and revise [section 200.322](#). Part 184 provides guidance to Federal agencies on how to apply the “Buy America” preference set forth in BABA to Federal awards for infrastructure projects. The revised section 200.322 clarifies existing provisions within part 200 on domestic preferences for procurements made under Federal financial assistance awards, and specifies that Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR part 184.

On October 25, 2023, the Office of Management and Budget (OMB) issued [Memorandum M-24-02](#), which rescinds and replaces Memorandum M-22-11, to provide supplemental implementation guidance for agencies on the application of a Buy American preference to Federal financial assistance programs for infrastructure and the process for waiving such a Buy American preference – including the circumstances under which waivers may be justified as consistent with applicable law and policy. To the extent that any guidance provided in this memorandum conflicts with guidance in 2 CFR part 184, the guidance in part 184 prevails.

In accordance with the memo, AML must ensure that all of its applicable federal financial assistance programs comply with [section 70914](#) of BABA. There are three key requirements that contractors and subcontractors are required to follow for an infrastructure project (Appendix A).

1. Domestic Preferences
2. Contract Language
3. Waivers

2. DOMESTIC PREFERENCES

WHAT ITEMS ARE COVERED BY A DOMESTIC, OR “BUY AMERICA”, PREFERENCE?

Contractors and subcontractors must ensure that all articles, materials, or supplies used in their infrastructure project are produced in the United States. An article, material, or supply should only be classified into one of the following categories: Iron and steel products; Manufactured products; Construction materials; or Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

IRON AND STEEL

- Articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both. “Wholly or predominantly” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.
- All manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States.

MANUFACTURED PRODUCTS

- The manufactured product was manufactured in the United States.
- 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.

In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

- a. For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- b. For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a) of this section, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

CONSTRUCTION MATERIALS

- All manufacturing processes for the construction material occurred in the United States. Construction materials means articles, materials, or supplies incorporated into an infrastructure project that consists of only one or more of the following materials. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.
 - Non-ferrous metals – All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
 - Plastic and polymer-based products – All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
 - Glass – All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
 - Fiber optic cable (including drop cable) – All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastics and polymer-based products, or any others.
 - Optical fiber – All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
 - Lumber – All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.
 - Drywall – All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
 - Engineered wood – All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

SECTION 70917(C) MATERIALS

- These materials are exempt from a Buy America preference and therefore do not have to be produced in the United States.
 - Cement and cementitious materials.
 - Aggregates such as stone, sand, or gravel.
 - Aggregate binding agents or additives.

WHEN DOES “BUY AMERICA” PREFERENCE APPLY?

A Buy America preference only applies to the iron and steel, manufactured products, and construction materials **used for the infrastructure project**. If AML determines that no funds from a particular award will be used for infrastructure, a Buy America preference does not apply to that award.

Similarly, a Buy America preference **does not apply to non-infrastructure spending** under an award that also includes an infrastructure component. A Buy America preference applies to *an entire infrastructure project*, even if it is funded by both federal and non-federal funds under one or more awards.

A Buy America preference only applies to articles, materials, and supplies that are **consumed in, incorporated into, or affixed to an infrastructure project**. It does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project.

It also does not apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used or within the finished infrastructure project **but are not part of or permanently affixed to the structure**.

EXEMPTIONS TO THE “BUY AMERICA” PREFERENCE?

The Buy America preference does not apply to expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.

“Pre and post disaster or emergency response expenditures” consist of expenditures for financial assistance that are:

- (1) Authorized by statutes other than the Stafford Act, 42 U.S.C. 5121 *et seq.*; and
- (2) Made in anticipation of or response to an event or events that qualify as an “emergency” or “major disaster” within the meaning of the Stafford Act, 42 U.S.C. 5122(1), (2).

3. CONTRACT LANGUAGE AND CERTIFICATIONS

All subcontractor contracts issued by a contractor under AML financial assistance awards for infrastructure, must contain a contract provision explaining the BABA requirements and a self-certification where subcontractors can certify compliance with Buy America preference requirements outlined in Section 2 of this handbook.

REQUIRED SUBCONTRACTOR CONTRACT LANGUAGE

Any subcontracts that may include a project for infrastructure shall include the following terms:

Buy America Domestic Procurement Preference:

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of 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, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and 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 that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to 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.

For further information on the Buy America preference, please visit the specific Federal funding agencies BABA website. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Waivers

When necessary, recipients may apply for, and the Federal funding agency may grant, a waiver from these requirements, subject to review by the Made in America Office. The Federal funding agency may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the 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;
2. Unreasonable Cost Waiver: 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; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing general applicability waiver. If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to the specific Federal funding agencies website and are subject to public comment periods of no less than 15 days. Waiver requests will also be reviewed by the Made in America Office.

1. Waiver type (public interest, non-availability, or unreasonable cost).
2. Recipient or subrecipient name and Unique Entity Identifier (UEI).
3. Federal agency who issued the award.
4. Federal financial assistance listing name and number.
5. Federal financial assistance title of project.
6. Federal Award Identification Number (FAIN).
7. Federal financial assistance funding amount.
8. Total estimated infrastructure expenditures, including all Federal and non-federal funds (to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America preference requirements. Include the name, cost, countries of origin (if known), and relevant [PSC](#) or [NAICS](#) code for each.
11. A certification that the 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 the prime contractor.

12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Approved waivers will be posted on the Federal funding agencies waivers website; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

Questions pertaining to waivers should be directed to the financial assistance awarding officer.

Definitions

“Construction materials” includes an article, material, or supply that consists of only one of these items:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, 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. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Contractors and subcontractors must submit the “EEC-003 – Contractor Certificate of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form, to the awarding entity. Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABA domestic preference requirement. Such disclosures shall be forwarded to the awarding entity who in turn will forward the disclosures to the Federal funding agency.”

REQUIRED SELF-CERTIFICATION

For AML financial assistance programs subject to BABA, contractors and subcontractors must sign and submit the “AML-003 – Contractor Certificate of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form, Figure 1. This form, which can also be found in Appendix B, shall be submitted with each payment request to the awarding agency.



**CONTRACTOR CERTIFICATE OF COMPLIANCE
WITH BUILD AMERICA, BUY AMERICA PROVISIONS
FOR FEDERALLY ASSISTED CONTRACTS**

Prime Contractors and subcontractors should complete and sign a copy of this form and submit with each payment request to the Division of Abandoned Mine Lands. Prime contractors must also attach receipts and/or other documentation with this form showing evidence of Buy America compliance.

FORM AML-003

CONTRACTOR NAME			
CONTRACTOR ADDRESS			
PROJECT NAME			
INVOICE PERIOD		TO	
CONTRACT NUMBER			
CONTRACT AMOUNT			

This certification is to be utilized by prime contractors and subcontractors who have been awarded contracts funded through Abandoned Mine Lands Program Grant Funds and subject to the Buy America provisions of the Infrastructure Investment and Jobs Act (Pub. L. No 117-58). Buy America provisions state:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and 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 that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

MATERIALS/MANUFACTURED GOOD(S) BEING USED FOR PROJECT (Please List)

TYPE OF GOOD	MAKE & MODEL	MANUFACTURING LOCATION

CERTIFICATE OF COMPLIANCE WITH BUY AMERICA

☐ I hereby certify that all of the iron and steel, manufactured products, and construction materials supplied or provided by our company for use on this project was manufactured in the United State of America, unless an applicable waiver applies.

or

I am relying on the following Buy America waiver:

☐ De Minimis Waiver
Iron and steel, manufactured products, and construction materials supplied/provided by our company total no more than 5 percent of the total applicable project costs, up to a maximum of \$1,000,000.00, of the iron and steel, manufactured products, and construction materials used in and incorporated into this project.

Applicable project costs are defined as material costs subject to the Buy America preference.

Representative Name

Representative Signature

Title

Date

The first page of the EEC-003 form contains information related to the project and invoice period.

It also requires a listing of materials/ manufactured goods that were used for the invoicing period.

The second page of the EEC-003 form contains language for certifying compliance and signature area.

Figure 1

MANUFACTURER CERTIFICATIONS

As an additional step to ensure compliance when purchasing products for the project, contractors and subcontractors must request a certification letter from the product manufacturer to demonstrate compliance with BABA requirements. The certification letter must contain five essential elements, which include:

- A reference to the project;
- Specific product information;
- Compliance with BABA reference;
- Location of manufacturer; and
- A company representative signature.

The certification letter should be maintained as part of the project record and submitted to AML as supporting documentation for the “AML-003 – Contractor Certificate of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form. Below are examples of two types of manufacturer certifications: Step Certification and Final Certification.

Step Certification

A step certification is a type of certification process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the subject products and materials certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of subject products and materials. Figure 2 gives an example of language to include in a step certification letter.

SAMPLE STEP CERTIFICATION LETTER:

Company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Step Certification for Project (XXXXXXXXXX)

I, **(company representative)**, certify the **(melting, bending, coating, galvanizing, cutting, etc.)** process for **(manufacturing or fabricating)** the following products and/or materials shipped or provided for the subject project is in full compliance with the Build America, Buy America (BABA) Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-27.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location: _____.

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative

Figure 2

Final Certification

Although obtaining step certification is a best practice, if not possible, contractors and subcontractors may consider requesting a final manufacturer certification letter. For a final certification letter, the final manufacturer that delivers the product to the worksite, vendor, or contractor provides a certification asserting that all manufacturing processes occurred in the United States. While this type of certification may be acceptable, it may not provide the same degree of assurance, and therefore additional documentation may be needed if the certification is lacking important information. Figure 3 gives an example of language to include in a final certification letter.

SAMPLE FINAL CERTIFICATION LETTER:

Company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: Build America, Buy America Act Certification for Project (XXXXXXXXXX)

I, (**company representative**), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the Build America, Buy America (BABA) Act requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-27.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location: _____.

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Signed by company representative

Figure 3

4. WAIVERS

Pursuant to section 70914(b) of BABA and 2 CRF 184.7, the Department of the Interior (DOI) has the authority to waive the Buy America Preference when: (1) applying the requirement is 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”); or (3) 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% (an “unreasonable cost waiver”). If a project cannot comply with the Buy American Preference requirements, contractors and subcontractors must seek a waiver from DOI. There are two categories of waivers: General Applicability Waivers and Project Specific Waivers.

GENERAL APPLICABILITY WAIVERS

The term “general applicability waiver” refers to a waiver that applies generally across multiple Federal agencies or awards. A general applicability waiver can be “product-specific” (e.g., applies only to a product or category of products) or “non-product specific” (e.g., applies to all “manufactured products”). Contractors and subcontractors subject to Buy American Preference may use general applicability waivers and do not require a separate application or approval prior to use. These may cover categories of products known to be unavailable domestically or are intended to ease the burden of compliance.

To date, DOI has approved one General Applicability Waiver of importance:

1. **De Minimis Purchases Waiver** – This waiver is critical to ensure that infrastructure project purchases below a de minimis threshold funded through financial assistance agreements sustain progress while reducing the burden on recipients.

This waiver covers infrastructure project purchases, totaling up to 5 percent of the total applicable project costs, up to a maximum of \$1,000,000.00. Applicable project costs are defined as material costs subject to the Buy America preference.

This waiver, which can be found in Appendix C, was approved by DOI on February 21, 2023 and expires on February 20, 2028.

PROJECT-SPECIFIC WAIVERS

Project-specific waivers are for the use of a specified non-domestic product for a single project. A contractor and subcontractor may request a waiver from DOI through their DOI grant representative. **DOI must approve waiver requests before a DOI funded project can permanently incorporate a non-domestic product.** Due to waiver requests being both project- and product-specific, any other contractors and subcontractors who wishes to use a waiver for a similar product must apply for a separate waiver based on specific project circumstances.

WAIVER SUBMISSION

First, check the DOI [Financial Assistance Waivers](#) and the OMB [Made in America Office \(MIAO\) Waiver](#) website to determine if your project or materials meet the criteria of one of the already approved waivers. If the criteria are met, a separate waiver is not required.

If your project or materials do not meet the general applicability waiver criteria or an approved Buy America waiver, you may submit a waiver request directly to DOI.

The waiver request justification should include a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States and a certification that a good faith effort was made to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with potential suppliers. To assist DOI with processing your request, note that the below information must be included (to the greatest extent practicable) on your waiver request. You may contact AML for assistance with bullet items 3 thru 7.



NOTE: before officially submitting the waiver request to DOI, it should be submitted to AML for their agreement.

- Waiver type (public interest, non-availability, or unreasonable cost).
- Contractor or subcontractors name and Unique Entity Identifier (UEI).
- Department of Interior Bureau or Office who issued the award.
- Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award).
- Federal financial assistance program name (reference block 8 on DOI Notice of Award).
- Federal Award Identification Number (FAIN) (if available or applicable).
- Federal financial assistance funding amount (reference block 11.m. on DO Notice of Award).
- Total estimated infrastructure expenditures, including all Federal and non-Federal funds (to the extent known).
- Infrastructure project description(s) and location(s) (to the extent known).
- List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from Buy America requirements, include name, cost, country(ies) of origin (if known), and relevant Product and Service Code ([PSC](#)) and North American Industry Classification System ([NAICS](#)) code for each.

- A description of efforts made (e.g., market research, industry outreach, etc.) by the contractor or subcontractor, in an attempt to avoid the need for a waiver. Such a description may cite, if applicable, the absence of any Buy American-complaint bids received in response to a solicitation.
 - Market research, where applicable, should include relevant details, including who conducted the market research, when it was conducted, sources that were used, and the methods used to conduct the research.
- Anticipated impact if no waiver is issued.

The purpose of the information is to demonstrate the contractor's or subcontractor's due diligence, and provide the DOI and MIAO with sufficient information to determine whether the proposed waiver is consistent with law and policy. Information provided for public review should help interested manufacturers gauge the demand for products for which agencies are considering waiving a Buy America preference.

Contractors or subcontractors applying for a waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver requests.

WAIVER APPROVAL

If DOI determines that your waiver request (in whole or in part) appears to meet the legal and policy criteria of Buy America, and in accordance with Section 70914 (c), the DOI will post its proposed waiver justification for public comment for a period of not less than 15 days to the DOI [Proposed Buy America Waiver Requests, Available for Public Comment](#) page. On a case-by-case basis when circumstances warrant, for example when a waiver covers items of special importance to American supply chains (such as those identified in section 3(b) of the Executive Order 13953) or involves a substantial amount of Federal funding, waivers may be subject to a minimum 30 day public comment period.

Before finalizing a waiver, DOI must submit the waiver determination to the OMB MIAO for final review pursuant to Executive Order 14005 and sections 70923(b)(2) and 70937 of the Infrastructure Investment and Jobs Act. After final review, the waivers are subject to a minimum 30-day public comment period.

DOI will post approved waivers on the DOI [Approved Buy America Requests](#) page, and AML will notify you if your waiver request was approved.

5. COMPLIANCE OVERSIGHT

CONTRACTOR COMPLIANCE RESPONSIBILITIES

Contractors bear much of the responsibility for ensuring compliance with BABA. Furthermore, contractors have a vested interest in ensuring that BABA compliance is met. If the contractor or subcontractor is not following BABA, this may mean that the contractor's funds are being used improperly.

The following tasks make up the contractor's BABA compliance oversight role:

- Include BABA language in subcontracts
- Verify required BABA certificate of compliance form submitted from subcontractors
- Check manufacturer certifications submitted from subcontractors
- Process waivers submitted from subcontractors

INCLUDING BABA LANGUAGE

Contractors are responsible for including the BABA provisions language, page 5 through page 7, into all subcontracts, as well as language that requires subcontractors to include BABA provisions into their subcontracts, if applicable.

VERIFYING SUBCONTRACTOR CERTIFICATIONS

When a subcontractor submits a request for payment, they are required to self-certify that all material or manufactured goods that they procured during the billing period complies with Buy America, page 8. Contractors are responsible for reviewing the subcontractor's AML-003 self-certification report, Figure 1, for accuracy.

Contractors are responsible for ensuring the first page of the form is completely filled out and all materials or manufactured goods being requested for reimbursement are listed on the form. The second page must be signed by the subcontractor authorized representative.

CHECKING SUBCONTRACTOR MANUFACTURER CERTIFICATIONS

Contractors are responsible for obtaining manufacturer certification letters, page 10 or page 12, from their subcontractors.

Contractors are responsible for ensuring that the language similar to the examples in Figure 3 and/or Figure 4 is contained in the certification; but at a minimum, the form must contain a reference to the law, a list of materials/items, the city and state where the materials/items were manufactured, and a signature from the manufacturer's representative.

PROCESSING WAIVERS

A subcontractor may wish to submit a waiver for certain materials or manufactured goods, page 14. If applicable, the contractor is responsible for developing the waiver, with assistance from AML. It will be the contractor's responsibility to file the waiver with DOI; however, before officially submitting the waiver request to DOI, it should be submitted to AML for their agreement.

6. DOCUMENTS AND FORMS TO BE SUBMITTED TO AML

- **CONTRACTOR/SUBCONTRACTOR CERTIFICATE OF COMPLIANCE**

When submitting a request for payment, the contractor and subcontractor must submit the “AML-003 – Contractor Certificate of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form (Appendix B) to certify Buy America compliance for materials purchased/used during the invoice period.

- **MANUFACTURER CERTIFICATIONS**

When submitting a request for payment, the contractor and subcontractor must submit the certification letters (page 10 and page 12) to certify all materials listed on the “AML-003 – Contractor Certificate of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form.

- **WAIVERS**

If applicable, submit waiver requests (page 14) to DOI; however, before officially submitting the waiver to DOI, submit a copy to AML for their agreement.

You may find it useful to use the Build America, Buy America Act Compliance Checklist for Contractors (Appendix D) as a tool to insure proper and timely document submission.

7. SUMMARY

If you have never administered a project with BABA requirements, it can be overwhelming at first. This handbook was developed to familiarize and assist you with these requirements.

It is recommended you read this handbook several times and study the figures/appendices. Everything you need to succeed is in this handbook.

However, even the greatest of guidance document will not make you an expert on the subject; that takes practice and repetition. That is why you should feel free to reach out to us if you have any questions, concerns, or need further clarification.

- For BABA specific questions, you may contact the Build America, Buy America Act Compliance Review officer at eecpayrollcert@ky.gov or by calling (502) 782-7024.
- For questions related to the project itself, you may contact your AML program contact.

8. APPENDICES

APPENDIX A

- BABA REQUIREMENT FLYER

APPENDIX B:

- FORM AML-003 - CERTIFICATE OF COMPLIANCE BABA

APPENDIX C:

- DE MINIMIS WAIVER

APPENDIX D:

- BABA COMPLIANCE CHECKLIST

