

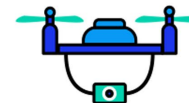
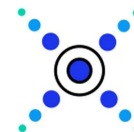
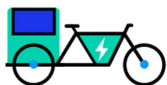


Welcome SMART Grantees

July 11th, 2024



U.S. Department of Transportation





US Department of Transportation

SMART Summit 2024

Buy America Requirements for SMART Grants

July 11, 2024



Buy America Requirements

- DOT financial assistance programs are subject to domestic preference requirements, often known as Buy America or Buy American provisions
- Several DOT Operating Administrations (including FAA, FHWA, FRA, FTA, and MARAD) have their own Buy America statutes, which apply to projects receiving financial assistance provided by those agencies
 - Generally cover iron/steel and manufactured products
- The Build America, Buy America Act (BABA) applies to infrastructure programs not covered by mode-specific Buy America statutes
 - Covers construction materials as well as iron/steel and manufactured products
- DOT financial assistance programs not covered by other statutes are required to apply the Buy American Act, per a provision in annual appropriations acts



Buy America and SMART Grants

- **If a project is considered an infrastructure project, it is required to comply with BABA**
- **If a project is not considered infrastructure, it is required to comply with the Buy American Act**



Build America, Buy America Act

- Part of the Bipartisan Infrastructure Law, which also authorized the SMART grants program
- Applies to Federal financial assistance programs for infrastructure
- Requires that all of the iron, steel, manufactured products, and construction materials used in a federally-assisted infrastructure project are produced in the United States
- Allows agencies to waive the requirements under certain conditions



BABA Requirements – Produced in the United States

- Iron or Steel Products
 - *Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components.
 - All manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States
- Manufactured Products
 - Include articles, materials, or supplies that have been (i) Processed into a specific form and shape; or (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
 - The cost of components mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product



BABA Requirements – Produced in the United States

- Construction Materials
 - Include
 - 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
 - Drywall
 - All manufacturing processes must occur in the United States
 - 2 CFR 184.6 defines standards for each type of construction material regarding which steps in the manufacturing process are included



Infrastructure Projects – Definition under BABA

- Any activity related to the construction, alteration, maintenance, or repair of infrastructure
- Infrastructure includes structures, facilities, and equipment 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; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.”



Infrastructure Projects – Definition under BABA (cont'd)

- BABA only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.
- Does not apply to:
 - Tools, equipment, and supplies brought to the construction site and removed at or before the completion of the infrastructure project
 - Equipment and furnishings 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.
- The SMART Grants Program Office will coordinate with grant recipients on whether their projects are designated as “infrastructure projects”
 - SMART Stage 1 technology demonstration and prototyping projects are generally not considered infrastructure projects



Buy American Act - Non-infrastructure Projects

- The Buy American Act (BAA) generally applies to Federal purchases of goods
- Section 409 of the annual THUD Appropriations Acts requires DOT financial assistance recipients to comply with the BAA
- DOT applies the BAA as implemented through the Federal Acquisition Regulation (FAR) (48 CFR Part 25)
 - Many provisions are broadly similar to BABA
- DOT also applies the standing waivers (exceptions) provided for in the FAR, including:
 - Non-steel or iron commercially available off-the-shelf items (COTS) under 41 U.S.C. § 1907
 - Information technology that is a commercial product under 48 CFR 25.103(e); and
 - The list of nonavailable articles found at 48 CFR 25.104.



Commercially available off-the shelf (COTS) items

- Any item of supply (including construction material) that is—
 - (i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace;
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace;
- and (2) Does not include bulk cargo, as defined in 46 U.S.C.40102(4), such as agricultural products and petroleum products.”



Buy America Waivers

- BABA (and BAA) allow for waivers of Buy America(n) requirements under certain conditions, including:
 - Applying the Buy America preference would be inconsistent with the public interest (a “public interest waiver”);
 - 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
 - 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”).



Buy America Waivers (cont'd)

- If a SMART grant recipient would like to request a waiver, they should contact the SMART program office, who will coordinate with the Office of Transportation Policy and the Office of General Counsel
- Waivers must be reviewed within DOT and by the Made in America Office in OMB
- Waiver requests must include documentation of the steps undertaken to identify a domestic supplier and any related market research
- Proposed waivers must be posted for public comment for at least 15 days. DOT is also required to consult with the Hollings Manufacturing Extension Partnership at the Department of Commerce on whether there is a domestic entity that could produce the item.
- Notices of final waivers will also be published in the Federal Register

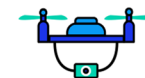


BABA and Related Resources

- USDOT Made in America Site: <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>
- USG Site: <https://www.madeinamerica.gov/>
- OMB guidance:
 - <https://www.federalregister.gov/documents/2023/08/23/2023-17724/guidance-for-grants-and-agreements>
 - <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>
- Federal Acquisition Regulation: <https://www.acquisition.gov/far/part-25>

Planning, Executing, and Realizing Accessible Transportation Systems

Lindsey Teel (OST-R)



Closing Remarks

