

Attachment E

Buy America Requirements

A. Background: As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, and specified in Executive Order 14005, Ensuring the Future is Made in All America by All of America's Workers, none of the funds under a federal award that are part of a 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.

- a. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.
- b. Grants may be covered by a Waiver to the Buy America provisions. Waivers are published here: <https://doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>.

B. Definitions:

1. "Construction materials" includes an article, material, or supply that is or consists primarily of:
 - non-ferrous metals;
 - plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - glass (including optic glass);
 - Lumber;
 - Drywall;
 - and anything that is installed, built, or purchased.
2. "Construction Materials" does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.
3. "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; and the construction materials used in the project are produced in the United States.
4. "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. Infrastructure includes all amenities funded through this Agreement.

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

C. Infrastructure Requirements: 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 (55%) 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; 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 www.doi.grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

D. Waivers: When necessary, the Subrecipient may apply for a waiver. The waiver request must be submitted to the Agency before work begins. Waivers must then be approved by Department of the Interior (DOI) who may grant a waiver from these requirements, subject to review by the Made in America Office. The DOI 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.

Applications for waiver must be in writing, signed by the Subrecipient's Principal Contact, and include the following. A form for this purpose will be provided by the Agency.

- a. Type of waiver requested (non-availability, unreasonable cost, or public interest).
- b. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
- c. Department of Interior Bureau or Office who issued the award.
- d. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
- e. Financial assistance title of project (reference block 8 on DOI Notice of Award).
- f. Federal Award Identification Number (FAIN).
- g. Federal funding amount (reference block 11.m. on DO Notice of Award).
- h. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
- i. Infrastructure project description(s) and location(s) (to the extent known).
- j. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant PSC or NAICS code for each.
- k. 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.
- l. 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.
- m. Anticipated impact if no waiver is issued. Approved waivers will be posted at www.doi.gov/grants/BuyAmerica/ApprovedWaivers; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers.

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 Subrecipient will notify the Agency of the general applicable waiver before work begins.