



HOME Rental Housing Development (RHD) Program

Build America, Buy America Act (BABA)

Introduction

The Build America, Buy America Act (BABA) requires all iron and steel, construction materials, and manufactured products used in federally funded infrastructure projects to be produced in the United States. Rental Housing Development (RHD) projects funded by the HOME Investment Partnerships Program (HOME) with five or more total units are considered public infrastructure projects and therefore must comply with BABA.



Covered Materials

BABA requires the following products be manufactured in the United States, which includes:

All Iron and Steel

All manufacturing processes, from melting through final coating, must occur in the United States.

All Manufactured Products

All products must be manufactured in the United States, and at least 55% of the total cost of components must be of United States origin.

Example: A door is constructed of the following components:

- | | |
|-------------------------------------|--|
| • Frame (U.S. Made) - \$50 | |
| • Glass Pane (Not U.S. Made) - \$25 | $\$50 + \$25 + \$15 + \$10 = \$100$ |
| • Handle (U.S. Made) - \$15 | $\$65 \text{ (U.S. Made)} / \$100 = 65\%$ |
| • Hinges (Not U.S. Made) - \$10 | Total Domestic Content: 65% → Compliant |

All Construction Materials

All construction materials such as glass, drywall, lumber, plastic and composites must be of United States origin.

Materials that are excluded from BABA include cement, aggregates, and on-site mixed materials (e.g., concrete). Materials that are tagged "Made in America" may or may not meet BABA requirements. All materials should be certified/verified that they meet BABA requirements regardless of label.

Roles and Responsibilities

Owners/developers, architects/engineers, and contractors/subcontractors (all tiers) must comply with BABA. Each role has its own set of responsibilities to ensure BABA compliance throughout the project, including:

Owners/Developers

- Coordinate communications between the design team and construction team on BABA requirements, and
- Submit/retain BABA documentation (certification and waiver request(s)) to the RHD Program.

Architects/Engineers

- Design using BABA-compliant materials and provide approved product lists that meet BABA criteria, and
- Support the owner and contractors in identifying domestic options.

Contractors/Subcontractors

- Sourcing, tracking and installing only BABA-compliant iron, steel, manufactured products and construction materials,
- Maintain records verifying U.S. origin and notify the owner immediately if materials cannot be sourced domestically, and
- Provide the total cost of covered materials to establish the De Minimis limit and submit BABA certification to the owner at construction completion.

Waivers

Owners/Developers must identify the need for a waiver early in the development process. General waivers and/or project-specific waivers may be applicable.

General Waivers

General waivers are public interest waivers that have been generally approved by HUD. General waivers include:

Small Grant Waiver	De Minimis Waiver	Exigent Circumstances Waiver
BABA requirements do not apply to infrastructure projects whose total cost is equal to or less than \$350,000.	BABA requirements do not apply for a De Minimis portion of an infrastructure project, meaning a cumulative total of no more than 5% of the total cost of iron, steel, manufacture products and construction materials (maximum of \$1 million) can be non-domestic.	BABA requirements do not apply when urgent conditions require immediate completion of an infrastructure project because of “exigent circumstances” or a threat to life, safety or property of residents and the community.

Project-Specific Waivers

Project-Specific waivers may also apply on a case-by-case basis. Project-Specific waivers include:

Public Interest Waiver	Non-Availability Waiver	Unreasonable Cost Waiver
This waiver may be granted if requiring the use of the American made product would be inconsistent with the public interest.	This waiver may be granted if the product needed is not produced in the United States in sufficient quantities or of a satisfactory quality.	This waiver may be granted if the inclusion of the product produced in the United States will increase the cost of the overall project by more than 25 percent.

To request a project-specific waiver, the owner/developer must complete the [RHD BABA Requirements Waiver Request](#) form and submit it to the RHD Program at DOADOHAffordableHousingHelp@wisconsin.gov . RHD program staff will submit the waiver to HUD within 14 business days. HUD will review and post the waiver for public comments. Waiver approval may take up to 6 months and is not guaranteed.

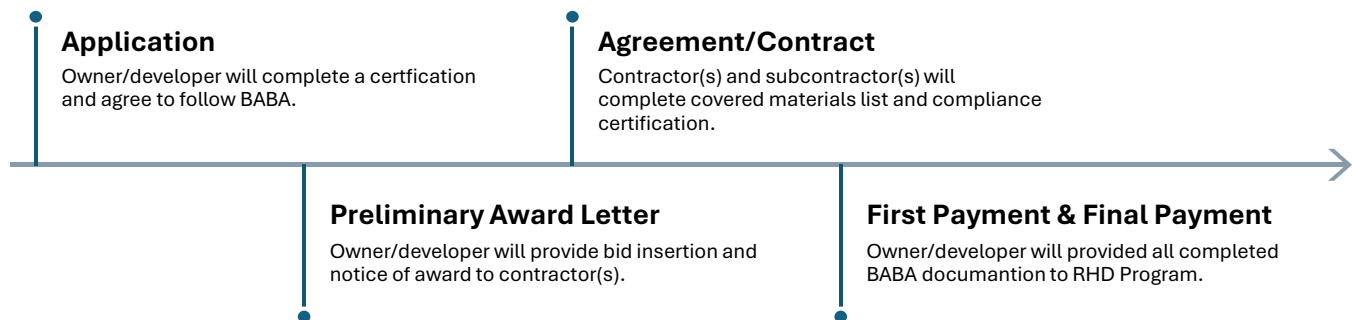
Documentation

Owners/developers, architects/engineers, and contractors/subcontractors (all tiers) play a role in obtaining and maintaining accurate BABA documentation.

Document	Due
RHD BABA Bid Insertion	Must be submitted to contractor(s) and subcontractor(s) by the owner/developer to inform the team of BABA requirements. Owner/developer should provide to contractor(s) and subcontractor(s) upon receiving the preliminary award letter.
RHD Notice of Award	Must be submitted to contractor(s) and subcontractors(s) by the owner/developer for completion upon receiving the preliminary award letter. Owner/developer must submit completed notice to the RHD Program by first payment draw and updates as necessary.
RHD BABA Covered Materials List	Contractor(s) must submit to owner/developer prior to first payment draw. Owner/developer will submit to RHD Program at first payment draw and updates as necessary.
RHD BABA Compliance Certification	Contractor(s) must submit to owner/developer prior to first payment draw. Owner/developer will submit to RHD Program at first payment draw and updates as necessary.
RHD BABA Project Specific Waiver	Must be submitted to RHD Program by owner/developer upon receiving the preliminary award letter and before purchasing the item(s) for which a waiver is sought, if applicable. RHD Program submits to the U.S Department of Housing and Urban Development (HUD) and Made In America Office (MIAO).

Non-compliance with BABA requirements may result in the costs being deemed ineligible for payment. The entity that paid the contractor prior to receiving the required BABA documentation may be responsible for those costs if deemed ineligible. Non-compliance may also result in project ineligibility. DEHCR may withhold payments until the required BABA documentation is received.

Timeline



Resources

For more information about BABA visit the [Build America, Buy America](#) page on the HUD website and/or the [Build America, Buy America Act](#) page on the HUD Exchange website. If you have further questions regarding BABA, you may contact the RHD Program at DOADOHAffordableHousingHelp@wisconsin.gov or submit your question directly to the HUD Exchange at [Ask A Question](#).