

BABAA Contract Level Compliance

All recipient and subrecipient contracts under NBRC financial assistance awards for infrastructure, issued on or after May 8, 2023, must include a contract provision explaining the Build America, Buy America Act (BABAA) requirements and a self-certification where contractors can certify compliance with domestic preference requirements outlined in BABAA, unless NBRC waives the BABAA requirement.

SUGGESTED LANGUAGE

The following provides suggested language for the contract provision:

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act (BABAA) shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by NBRC.

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. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to NBRC, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to NBRC.

For NBRC financial assistance programs subject to BABAA, contractors and subcontractors must sign and submit the following certification to the next tier (e.g., subcontractors submit to the contractor; contractors submit to the non-federal entity).

SUGGESTED LANGUAGE

The following provides suggested language for the self-certification:

The undersigned certifies, to the best of their knowledge and belief, that:

The Build America, Buy America Act (BABAA) requires that no federal financial assistance for “infrastructure” projects is provided “unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” Section 70914 of Public Law No. 117-58, §§ 70901-52.

The undersigned certifies that for the _____ (Project Name and Location) _____ the iron, steel, manufactured products, and construction materials used in this contract are in full compliance with the BABAA requirements including:

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 purchased with NBRC financial assistance must be produced in the United States. For a manufactured product to be considered produced 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% 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.

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, ____ [Contractor or Subcontractor] __, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the [Contractor or Subcontractor] understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.”

Signature of [Contractor’s or Subcontractor’s] Authorized Official

Name and Title of [Contractor’s or Subcontractor’s] Authorized Official

Date

Final Certification Letter

NBRC award recipients and subrecipients 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. Additional documentation may be needed if the certification is lacking important information. Sample final certification language is included below.

SAMPLE FINAL CERTIFICATION LETTER

Company letterhead
Date

Company Name
Company Address
City, State Zip

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

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 Act (BABAA) requirement as mandated in the Infrastructure Investment and Jobs Act (IIJA) Pub. L. No. 117-58, §§ 70901-52.

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