

SECTION 018000 – AMERICAN IRON AND STEEL (AIS) AND BUILD AMERICA-BUY AMERICA (BABA) ACT

PART 1 - GENERAL

1.01 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.02 SUMMARY

- A. Section includes administrative and procedural requirements for AIS and BABA.

1.03 DEFINITIONS

- A. Iron and Steel Products: Products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- B. Steel: An alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- C. Construction Materials: Includes an article, material, or supply-other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand or gravel; or aggregate binding agents or additives-that is or consists primarily of:
 - 1. Non-ferrous metals;
 - 2. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
 - 3. Glass (including optic glass)
 - 4. Lumber; or
 - 5. Drywall.
- D. Domestic Preference: This term and condition implements the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, including Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-52.
 - 1. None of the funds provided under this award may be used for a project for infrastructure unless:
 - a. 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;
 - b. 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 for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
 - c. All construction materials (excluding cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or

- additives) are manufactured in the United States. All manufacturing processes for the construction material occurred in the United States.
2. This preference also requires that all iron and steel products used for a project for the construction alteration, maintenance or repair of a public water system or treatment work are produced in the United States except as provided below.
 - a. Applying the requirement would be inconsistent with the public interest.
 - b. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - c. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.
- E. Domestic Content Procurement Preference: 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.
- F. 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.
- G. Project: The construction, alteration, maintenance, or repair of infrastructure in the United States.

1.04 AMERICAN IRON AND STEEL (AIS)

- A. AIS requirements apply to State Revolving Fund assistance agreements signed on or after January 17, 2014, including all treatment works projects funded by a CWSRF assistance agreement and all public water system projects funded by a DWSRF assistance agreement signed on or after January 17, 2014. Based on the FY 2023 Consolidated Appropriations Act directive Congressional language, AIS requirements apply to this project.
- B. The Build America, Buy America (BAB) Act requirements do not supersede the AIS requirements, and both provisions still apply and work in conjunction. Compliance with AIS requirements meets the BABA requirements for iron and steel.

1.05 REQUEST FOR A WAIVER

- A. Any recipient request to use foreign iron or steel products shall include adequate information for federal Government evaluation of the request, including.
 1. A description of the foreign and domestic iron, steel, and/or manufactured goods;
 2. Unit of measure;
 3. Quantity;
 4. Cost;
 5. Time of delivery or availability;
 6. Location of the project;
 7. Name and address of the proposed supplier; and
 8. A detailed justification of the reason for use of foreign iron or steel products cited.

- B. If the Administrator receives a request for a waiver under this section, the waiver request shall be made available to the public for at least 15 days prior to making a finding based on the request.
- C. Unless the Administrator issues a waiver of this term, use of foreign iron and steel products is noncompliant with P.L. 117-103 and the Explanatory Statement for Division G of P.L. 117-103.
- D. This term and condition shall be applied in a manner consistent with United States obligations under international agreements.

1.06 BUILD AMERICA, BUY AMERICA (BABA) ACT

- A. The Build America, Buy America Act is a law that applies a domestic content procurement preference requirement to Federally funded public “infrastructure projects”.
- B. 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.

1.07 REQUEST FOR WAIVER

- A. A request to waive the application of the domestic content procurement preference must be in writing and submitted following the waiver instruction at <https://www.epa.gov/cwsrf/build-america-buy-america-baba> .
- B. Waiver requests are subject to review by the Office of Management and Budget’s Made in America Office.
- C. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.epa.gov/cwsrf/build-america-buy-america-baba-approved-waivers> .
- D. The U.S. Environmental Protection Agency may grant a waiver based upon one of the exceptions as established in Section 70914(b) of the Infrastructure Investment and Jobs Act and further described in the Office of Management and Budget Memorandum M-22-11.
- E. Any recipient waiver request to use foreign iron, steel, manufactured products, and/or construction materials in an infrastructure project shall include adequate information for the Federal Government evaluation of the request including:
 - 1. The Federal Award Identification Number (FAIN);
 - 2. Location and description of the project;
 - 3. Total cost of infrastructure expenditures, including federal and non-federal funds;
 - 4. List of iron or steel item(s), manufactured products, and construction material(s) proposed to be excepted from the Buy America requirements, including name, cost, country(ies) of origin (if known), relevant Product Services Code (PSC) and North American Industry Classification System (NAICS) code for each, unit of measure, quantity, time of delivery or availability, and name and address of the proposed supplier;

5. A detailed justification of the reason for use of foreign iron, steel, manufactured products, and/or construction materials;
 6. Anticipated impact if no waiver is issued; and
 7. A certification that the federal official or assistance 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.
- F. Unless a waiver applies, use of foreign iron, steel, manufactured products, and/or construction materials that are consumed in, incorporated into, or affixed to an infrastructure project is noncompliant with this term and condition pursuant to the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, including Build America, Buy America Act, Pub. L. No. 117-58 §§ 70901-52.
- G. Maintain documentation of any use of materials which are considered de minimis and are covered by an existing waiver (e.g. miscellaneous, generally low-cost products that are essential for construction and are incorporated into the physical structure of the Project) with grant project files for a period of three years from the date of submission of the final expenditure report, in accordance with 2 CFR 200.334.
- H. If recipient seeks coverage under an existing BABA waiver, recipient agrees to submit available evidence to the EPA project officer to support such a determination as identified in the BABA waiver. Recipient shall maintain this evidence with grant project files for a period of three years from the date of submission of the final expenditure report, in accordance with 2 CFR 200.334.

END OF SECTION