

**Build America, Buy America Act**  
**Terms and Conditions**  
*December 18, 2024*

**I. Build America, Buy America Act Requirements**

All grantees must comply with the Infrastructure Investment and Jobs Act (IIJA) and the Build America, Buy America Act (the Act), Pub. L. No. 117-58, §§ 70901-52, including the implementing requirements at 2 CFR Part 184 and M-24-02, as summarized here. None of the funds provided under this award may be used for an infrastructure project 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.
- c) 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 construction material standards are listed in the definitions section below.

Incorporation into an infrastructure project - 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.

Recipients must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this award.

Recipients must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by an approved waiver or an exemption provided in 2 CFR 184.8, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the recipient. Recipients must keep these certifications with the award/project files and be able to produce them upon request from the Denali Commission auditors or Office of Inspector General.

Waivers – When necessary, recipients may submit a written waiver request to Denali Commission to waive the Buy America Preference. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by Denali Commission and the Office of Management and Budget Made in America Office.

Recipients should consult the Denali Commission Buy America page here: [General Applicability Waiver of Build America, Buy America Provisions](#) to determine whether there are any applicable waivers in place.

When Denali Commission has determined that one of the following exceptions applies, a final determination of the waiver request will be made:

- i) applying the Buy America Preference would be inconsistent with the public interest.
- ii) 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;  
or
- iii) 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.

Before applying a Buy America preference to a covered program that will affect Tribal Communities, Denali Commission will follow the consultation policies established through Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and consistent with policies set forth in the Presidential Memorandum of January 26, 2021, on Tribal Consultation and Strengthening Nation-Nation Relationships.

See the definitions section of Buy America terms.

a. Definitions

- i. Construction materials means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material. (1) The listed items are: (i) Non-ferrous metals; (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); (iii) Glass (including optic glass); (iv) Fiber optic cable (including drop cable); (v) Optical fiber; (vi) Lumber; (vii) Engineered wood; and (viii) Drywall. (2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material. “Buy America Preference” means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.
- ii. Infrastructure means public infrastructure projects in the United States, which includes, at a minimum, the 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.