

Three tips for obtaining a domestic preference waiver and complying with domestic preference requirements

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The Infrastructure Investment and Jobs Act (IIJA) contains domestic preference requirements under Build America, Buy America (BABA) provisions that mandate the use of domestically produced iron, steel and manufactured goods for infrastructure projects funded with federal funds. While these requirements aim to promote domestic production, it's not always possible to fulfill them for various reasons such as the unavailability of domestic products or excessive costs. Therefore, federal grantors have the ability to provide waivers for domestic preference requirements under certain circumstances.

Waivers are granted by federal awarding agencies and the types of domestic preference waivers may vary depending on the agency. Generally, there are three types of waivers that can be either project specific or generally applicable:

- ▶ **Public interest waivers:** These are used when an agency determines that other important policy goals cannot be achieved consistent with BABA requirements and the proposed waiver would not meet the requirements for a nonavailability or unreasonable cost waiver.
- ▶ **Nonavailability waivers:** These are used to address the unavailability of American-made iron, steel, manufactured products or construction materials.
- ▶ **Unreasonable costs:** These are used if the inclusion of iron, steel, manufactured products or construction materials produced in the United States will increase the cost of the overall project by a certain threshold, usually by more than 25%.

General applicability waivers, which refer to waivers that apply across multiple awards, can be product specific, applying only to a product or category of products, or non-product specific that apply to all manufactured products.

If your organization is seeking a waiver of domestic preference requirements, here are three tips to keep in mind:

- 1 Understand the waiver criteria:** Before applying for a waiver, it's important to understand the criteria for eligibility. Examples of waiver criteria can include factors relevant to time constraints, targeted criteria for specific materials or products, and conditional criteria, which are used with specific conditions that support BABA policies.
- 2 Develop a strong justification:** Once you understand the criteria, you should develop a strong justification for your waiver request. For example, this should include a detailed explanation of why you cannot meet the domestic purchase requirements, what specific materials or products you need to purchase, and why these are not available domestically. You should also explain any economic impacts that the waiver would have on your project or goals of the program.
- 3 Plan ahead:** It's important to plan ahead and anticipate the need for a waiver early in the project planning process. This will give you time to gather the necessary information, develop a strong justification and submit your request timely.

In summary, the IIJA requires domestic purchase requirements, but waivers can be available under certain circumstances. To seek a waiver, it's crucial to understand the eligibility criteria, develop a strong justification for your waiver request and plan ahead. By following these three tips, you can increase your chances of obtaining a waiver and avoid risk of noncompliance with domestic preference requirements.



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