

## **Sample Steps for Identifying a Need for a Build America, Buy America Act Waiver Request for a Contract for Infrastructure Project Costs**

### **Example 1: Build America, Buy America Act Waiver Need Is Identified During Contractor Selection**

1. The Local Workforce Development Board (Board) issues a solicitation to procure a contract for infrastructure project costs.
2. The solicitation includes the provision provided in Attachment 1, Build America, Buy America Contract Provision for Vocational Rehabilitation Contracts, advising offerors that all iron and steel, manufactured products, and construction materials that are consumed in, incorporated into, or affixed to the infrastructure project must be produced in the United States in conformance with the Build America, Buy America Act (BABAA).
3. The Board evaluates offers and makes its selection.
4. If the selected offer does not indicate that its offer includes iron and steel, manufactured products, or construction materials that were not produced in the United States, the Board proceeds with its process to issue the contract.
5. Conversely, if the selected offer identifies any iron and steel, manufactured products, or construction materials as not being produced in the United States, the Board must first check the respective federal agency's website to verify whether a waiver already exists in order to address the specific scenario. If no waiver exists, the Board informs the offeror that the Board must request and receive a BABAA waiver before the Board may issue the contract. The Board requests a BABAA waiver according to the instructions provided in Attachment 2, Build America, Buy America Act Waiver Request Instructions for Boards.
6. If the Board requests and receives an approved BABAA waiver, the Board proceeds with its process to issue the contract.
7. If the Board requests a BABAA waiver but the waiver is denied, the Board notifies the first selected offeror of the issue. The Board may then take one of the following actions:
  - The Board may consider contracting with the next highest scoring responsive offer if that offer is in the competitive range, not impacted by the same waiver response, and not otherwise ineligible to receive funds (for example, because of debarment or suspension). If the details of that offer require a different waiver request, the Board proceeds with the BABAA waiver request process and the aforementioned steps.
  - Alternatively, when no other responsive offer exists in the competitive range, the Board cancels the solicitation and reprocures for the contract.

## **Example 2: Build America, Buy America Act Waiver Need is Identified After Contract Execution**

1. The Board issues a contract for infrastructure project costs.
2. The contract includes the BABAA contract provision provided in Attachment 1. In order to fulfill the BABAA requirement, the contract requires that the contractor inform the Board if the contractor learns that any iron and steel, manufactured products, or construction materials that are to be used in the infrastructure project were not produced in the United States. The contract prohibits the contractor from proceeding with work involving the affected materials until the Board reviews the matter and either informs the contractor that a BABAA waiver is not required or that a BABAA waiver has been requested and received. The contract requires that the contractor include the BABAA contract provision provided in Attachment 1 in subcontracts that the contractor issues for work on the infrastructure project that involve the purchase of iron and steel, manufactured products, or construction materials, thus requiring subcontractors to comply with the same BABAA requirements that apply to the Board's contractor.
3. The contractor notifies the Board of the need for a BABAA waiver. The Board reviews the facts, requests assistance from the Texas Workforce Commission as needed and determines whether the circumstance requires a BABAA waiver. If a waiver is needed, the Board then checks the respective federal agency's website to verify whether a waiver already exists to address the specific scenario.
4. If the Board determines that the circumstances require a BABAA waiver and no existing waiver is already in place, the Board requests the waiver as described in Attachment 2. The Board informs the contractor of the decision and assesses the impact on the rest of the project—that is, whether the matter requires a hold on all work or whether work on another part of the project may continue while awaiting the waiver decision.
5. The Board receives the BABAA waiver decision and informs the contractor accordingly. If the request was denied, the Board and contractor reassess the impact on the project.