

THE BUILD AMERICA, BUY AMERICA ACT

Failure to Adeptly Implement Buy America Poses Serious Challenges to Bipartisan Infrastructure Law

Action Needed:

Congress must conduct oversight over OMB's implementation of BABAA to ensure the agency puts forth final rules based on sufficient supply chain research, stakeholder input and realistic timetables to help ensure infrastructure built in America can be delivered on time and on budget.

Background:

The supply chain remains strained and unreliable, as prices remain well above what they were two years ago. AGC supports sensible efforts to incentivize the growth of America's domestic manufacturing capacity to restore balance to the supply chain. Unfortunately, the Administration has not adeptly implemented the Build America, Buy America Act (BABAA). BABAA expands domestic sourcing requirements to all construction materials on federally assisted projects such as affordable housing, drinking water, transportation projects and more.

AGC Message:

- **OMB failed to do its supply chain homework before mandating BABAA requirements in contracts, resulting in significant confusion.** The Office of Management & Budget (OMB) issued *preliminary* guidance defining construction materials on April 18 and told agencies to include BABAA requirements in all new contracts on May 14. OMB issued these “rules” before conducting significant research on the supply chain, as it put forth a request for information within the guidance and has yet to issue final guidance. Significant confusion among industry, federal, state and local agencies remains regarding the difference between a construction material and a manufactured product and what manufacturing processes must occur domestically for construction materials.
- **Federal agencies have further sowed confusion with a lack of direction.** For example, the USDOT has waived the inclusion of BABAA requirements as they relate to construction materials through Nov. 9; the EPA has issued waivers from the construction material requirements for the drinking water and safe wastewater state revolving funds for projects that initiated design planning before May 14; and the HUD has proposed—and not finalized since April 29—a waiver through Nov. 9. Agencies have failed to identify a specific list of which construction materials will have to be Buy America compliant and which materials will be considered a manufactured product.
- **The waiver process lacks transparency and is unworkable.** As required by executive order, federal agencies must submit waivers for items not made in America to OMB. OMB must approve or deny the waiver within 15 days. This does not, however, detail when a federal agency received the waiver request first. Additionally, requiring the White House to review a cog in a construction project is as efficient as requiring the Secretary of Education to approve every child's sick note before they can return to school.
- **OMB's implementation threatens the success of the BIL.** The Bipartisan Infrastructure Law depends upon non-federal investment—state, local, and private funding sources. Instead of implementing the new requirements on a product-by-product basis, after identifying manufacturing capacity, OMB has chosen to charge full speed ahead amidst supply chain woes – like long lead times and material allocations. This investment will be hindered by rising material prices and chaotic BABAA implementation.