

BUY AMERICA

Poor Implementation of New Buy America Requirements Jeopardizes the Success of the IIJA

Action Needed:

Congress must conduct oversight over OMB's implementation of BABAA that:

- (1) Presses OMB to put forth suitable timelines for implementation based on supply chain research and stakeholder input to ensure the success of the IIJA; and
- (2) Demands full transparency in the waiver process from the time the agency first receives the waiver to its movement within agency offices for review and ultimately to OMB.

Background:

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) included in the Infrastructure and Jobs Act (IIJA). BABAA expands domestic sourcing requirements to all construction materials on federally assisted projects and the rushed implementation of the law threatens delays and increased costs for construction projects such as affordable housing, transit systems, drinking water, roads, bridges and more.

AGC Message:

- **OMB rushed implementation with little interest in learning about construction.** The Office of Management & Budget (OMB) has issued multiple iterations of guidance, that often conflict with each other. Instead of doing market research and studying the impacts that this could have on the supply chain, they have just created confusion. Significant confusion among all stakeholders – from states, local governments, and the construction industry – remains as we now are reinterpreting new guidelines published in August 2023.
- **The confusion has trickled down to federal agencies.** 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. Instead, state and local agencies are putting forth their own guidance or nothing at all on this subject. This creates significant risk for the contractor trying to bid on a project.
- **The waiver process lacks transparency and is unworkable.** 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 IIJA.** 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 industry confusion and uncertainty. This investment will be hindered by rising material prices and chaotic BABAA implementation.