

## **SPECIAL NOTICE TO BIDDERS**

### **Buy American Provision Changes**

**July 2023**

The Build America, Buy America (BABA) sections in Public Law No. 117-58 (Bipartisan Infrastructure Law (BIL)) establish three classes of materials that must be declared as being produced in the United States:

- Iron and Steel
- Manufactured Products
- Construction Materials

Section GCP 60-09 incorporates changes to the Buy American Preference requirements to comply with recent FAA interpretations. Because individual construction materials are not eligible FAA projects, FAA considers construction materials incorporated in AIP funded construction projects to be combined with other materials through a manufacturing process into a final manufactured good [the project]. This allows construction materials incorporated on the project to be part of the Type 3 waiver process.

FAA has clarified that structural iron, like structural steel, must be 100% U.S. origin. Small amounts of iron used in components and subcomponents that are not structural may be included in a Type 3 waiver.

As part of this change, forms 25D-151 was modified. Form 25D-154 was not changed, and the other forms used in the waiver process are available through the FAA website below.

Appendix A4 of the FAA's *Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects* (FAA Contract Guidelines) contains information on FAA's requirements under BABA, Executive Order 14005, and 49 USC § 50101. FAA has also published two fact sheets containing guidance information regarding BABA, IIJA, and Executive Order 14005.

Included in the Fact Sheet for IIJA, BABA, and Executive Order 14005 is a clarification (at Item 17) that nationwide waivers issued more than 180 days prior to 11/15/2021 are no longer current. The Nationwide Buy American Waivers list contains expired items with an effective date prior to this. New projects wishing to use such items must include them as part of the Type 3 waiver request.

The second page of FAA Form 5100-136, Buy American Project/Product Content Percentage Calculation – Worksheet, does not need to be completed for a Type 3 Waiver. That page is for a Type 2 or 4 waiver.

BABA can be found in Sections 70901-70952 of the BIL.

The BIL can be found at <https://www.congress.gov/bill/117th-congress/house-bill/3684/text>

FAA Contract Guidelines can be found at <https://www.faa.gov/sites/faa.gov/files/2023-01/combined-federal-contract-provisions-2023-1-20.pdf>

Executive Order 14005 can be found at <https://www.federalregister.gov/documents/2021/01/28/2021-02038/ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers>

FAA's Buy American Waiver forms and Nationwide Buy American Waivers list can be found at [https://www.faa.gov/airports/aip/buy\\_american/](https://www.faa.gov/airports/aip/buy_american/)

FAA Buy American Preference BABA Implementation Fact Sheet  
[https://www.faa.gov/airports/aip/buy\\_american/media/BABA%20Implementation%20Fact%20Sheet.pdf](https://www.faa.gov/airports/aip/buy_american/media/BABA%20Implementation%20Fact%20Sheet.pdf)

FAA Buy American Preference Implementation of IIJA, BABA, and Executive Order 14005 Fact Sheet  
[https://www.faa.gov/airports/aip/buy\\_american/media/BABA%20Executive%20Order%2014005.pdf](https://www.faa.gov/airports/aip/buy_american/media/BABA%20Executive%20Order%2014005.pdf)