

**Kansas Small Cities CDBG
BABA Language for Inclusion in Bids and Subcontracts**

When advertising for a bid, language for BABA should be included. The language is exemplified below.

Minimum Language for All Contracts Provided by HUD:

The Grantee must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

Sample Language for Inclusion into Professional Services Agreements:

This agreement is for professional services related to a project that is subject to the Build America, Buy America Act (BABA) requirements under Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 117-58. While professional services are not subject to BABA, the Provider understands that they are responsible for ensuring that, absent a waiver by the Department of Housing and Urban Development, Provider shall not approve for use in this project, any iron, steel, manufactured products, or construction materials unless such materials have been produced in the United States. Provider shall obtain all necessary compliance certificates for work that is within provider's scope of work. Failure to do so shall be a default under this agreement. Guidance on complying with BABA is outlined by Office of Management and Budget's Memorandum M-24-02, Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure.

Sample Language for Inclusion into Advertisement for Bids:

This agreement is for services related to a project that is subject to the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended. Absent an approved waiver, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget's Memorandum M-24-02, "Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure."

Contractor shall include Manufacturer's Certification for BABA requirements for all BABA-covered items to be incorporated into the infrastructure project. Contractor shall comply with BABA requirements, including coordination with manufacturers, distributors, and suppliers to correct deficiencies in any BABA documentation. For any change orders, Contractor shall provide BABA documentation for any new products or materials required by the change. Contractor shall designate the responsible parties for determining the final categorizations for all project items.