

BUILD AMERICA, BUY AMERICA ACT (BABAA)  
2024 CONSULTATION and LISTENING SESSION REPORT OUT  
U.S. Department of Agriculture (USDA)

Wednesday, May 22, 2024 and Thursday, May 23, 2024

Virtual Meeting

**Mission Areas:** Office of the Secretary

**Staff Offices:** Office of the Chief Financial Officer (OCFO), Office of Tribal Relations (OTR)

**Consulting Officials:**

- Tyson Whitney, Director, Transparency and Accountability Reporting Division, OCFO
- Betsy Rakola, Deputy Director, OTR

NOTE: On January 10, 2025, the U.S. Department of the Interior posted a [five-year, multi-agency Tribal BABAA waiver](#). This multi-agency waiver includes programming made available by USDA.

**I. Welcome and Opening Remarks**

- The Build America, Buy America Act, enacted as part of the Infrastructure Investment and Jobs Act (P.L. 117-58) on November 15, 2021, focuses on maximizing the federal government's use of services, goods, products, and materials produced and offered in the United States.
- BABAA requires that all iron, steel, manufactured products, and construction materials used in federally funded projects for infrastructure must be produced in the United States.
- USDA coordinates with the White House Office of Management and Budget (OMB) Made in America Office to ensure compliance with these procurement requirements.
- BABAA refers to OMB definition of federal financial assistance under 2 CFR 200.1 which, at the time of this consultation, included States, local governments, territories, Indian tribes, Institutions of Higher Education (IHE), and nonprofit organizations as covered entities.

**II. Consultation**

*A. Applicability to Tribes, Alaska Native Corporations, Tribal Colleges, and Non-Profits*

- One Tribal Proxy encouraged greater lead times in application process for programs where BABAA requirements apply to allow Tribes to complete due diligence. Additionally, the Proxy reflected that many Tribal lands remain in remote or isolated portions of the Nation, significantly increasing freight and costs for the delivery of many domestic items.

*B. Sourcing of Domestic, Steel, Iron, and Manufacturing Material*

- One Tribal Proxy shared an experience where the Tribe confirmed domestically sourced product at the time of purchase but, upon receipt, determined the product to be internationally sourced. The Proxy asserted that this lack of market transparency increases the number of steps necessary to comply with BABAA: finding the vendor, performing the BABAA-compliant solicitation, stating requirements, and verifying country of origin upon receipt.

*C. Office of Management and Budget (OMB) Expectations for Submitting Infrastructure Applications*

- One Tribal Proxy stated that their Tribe that their Tribe has, in some cases, not received any responses to a Request for Proposal where vendors seem to find the Tribe's purchasing requirements unreasonable or unfeasible, such as domestically sourced materials. Requiring a Tribal applicant to submit a sourcing strategy at the time of an application for funding may not be feasible and may create scenarios where Tribes decide not to submit an application without certainty of future funding. The Proxy additionally questioned whether there may be a no-penalty withdrawal from a grant once the recipient determines that domestic sourcing requirements make a project infeasible.

**III. Listening Session**

*A. Applicability to "Infrastructure"*

- Tribal representatives expressed significant uncertainty on whether their construction projects such as irrigation networks, food processing facilities, or barns met criteria for "infrastructure" under the BABAA's unclear definitions.

*B. Applicability to Tribes, Alaska Native Corporations, Tribal Colleges, and Non-Profits*

- Tribal representatives asked that USDA consider Alaska Native Corporations as Tribes where allowed and consider wholly owned Tribal business interests as Tribes in all instances. The Tribal leaders asserted that such Tribes and Tribal business interests should be granted the greatest flexibility allowed under law.

*C. Sourcing of Domestic, Steel, Iron, and Manufacturing Material*

- Tribal representatives stated that Tribal purchasing officials have varying degrees of supply chain management expertise, which is needed to meet domestic sourcing requirements. They highlighted a need for additional technical assistance, training, and resourcing.

*D. OMB Expectations for Submitting Infrastructure Applications*

- A representative from a Tribal Corporation requested clarification on expectations and requirements across the federal government. The representative expressed concern on the discrepancy of the types of funding made available under the Infrastructure Investment and Jobs Act in relation to the definition of infrastructure: While the law made no funds available for housing, housing is considered infrastructure under some circumstances through BABAA.