

Build America, Buy America: Domestic Sourcing Preferences



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What are Domestic Sourcing Preferences?

What are NSF's domestic preference Terms?

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How did NSF Implement the Act?

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What are Domestic Sourcing Preferences?

Executive Order 14005 Ensuring the Future Is Made in All of America by All of America's Workers

Infrastructure Investment and Jobs Act" (IIJA; P.L. 117-58)

OMB Memorandums M-21-26, M-22-08, M-22-11



What are NSF's Domestic Preference Terms?

Article 45. Domestic Preferences for Procurements

Article 46. Made in America

Article 47. Build America, Buy America



Domestic Preference for Procurements term

Article 45. Domestic Preference for Procurements

The awardee is notified of the applicability of 2 CFR §200.322, entitled Domestic Preferences for Procurements.



Made in America term

Article 46. Made in America

In implementation of 2 CFR §200.322, all Research Infrastructure awards must retain appropriate documentation to substantiate any circumstance where the awardee has deemed a U.S. preference not feasible in acquiring goods, products, or materials. The documentation must identify the basis for the determination and be based on:

- a. Domestic non-availability – articles, materials, or supplies are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities and of a satisfactory quality to meet technical or operational requirements;
- b. Unreasonable cost – the price of the domestic end product (including transport to the construction site) is higher than the price of a foreign end product by 30 percent if offered by a small business or 20 percent if offered by other than a small business;
- c. The purchase is related to commercially-available information technology; and/or d. The purchases are at or below the micro-purchase threshold (currently \$10,000 for most acquisitions) or related to procurements for use outside of the United States. The requirements of this article must be included in all subawards, contracts and purchase orders for work or products under this award.



Build America, Buy America term

Article 47. Build America, Buy America

a. The awardee is subject to the Buy America Sourcing requirements under the Build America, Buy America provisions of the [Infrastructure Investment and Jobs Act](#) (IIJA) (P.L. 117-58, §§ 70911-70917) when using Federal funds for the purchase of goods, products, and materials on any form of construction, alteration, maintenance, or repair of infrastructure in the United States regardless of the appropriation.

These sourcing requirements require that all iron, steel, manufactured products, and construction materials used in Federally funded infrastructure projects must be produced in the United States. The awardee must implement these requirements in its procurements and this article must flow down to all subawards and contracts at any tier. For legal definitions and sourcing requirements, the awardee must consult NSF's Implementation of the Act on the [Build America, Buy America website](#).

b. When supported by rationale provided in IIJA §70914, the awardee must submit a waiver request to the cognizant NSF Program Officer and Grants and Agreements Officer. Non-compliant purchases must not be made in advance of waiver approval. Guidance on the submission of an NSF waiver request is available on the [Build America, Buy America website](#).



Why Build America, Buy America and Made in America? Why Now?

- Gaps in Manufacturing Base
- Gaps in Knowledge Base
- Ability to Track use of Funds
- Transparency



What is the Build America Buy America Act?

The Act requires each Federal agency ensure that none of the funds made available for a Federal financial assistance program for infrastructure, may be obligated for a project unless all iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

When necessary, award recipients may apply for a waiver from these requirements. NSF may waive the application of the domestic content procurement preference in the case of one of three exceptions:

- Public interest
- Nonavailability
- Unreasonable Cost



How did NSF implement the Act?

Notice of Funding Opportunity

Term and Condition

Website

Waiver Process



Build America, Buy America NOFO

Administrative and National Policy Requirements

Build America, Buy America

As expressed in Executive Order 14005, [Ensuring the Future is Made in All of America by All of America's Workers](#) (86 FR 7475), it is the policy of the executive branch to use terms and conditions of Federal financial assistance awards to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States.

Consistent with the requirements of the [Build America, Buy America Act](#) (Pub. L. 117-58, Division G, Title IX, Subtitle A, November 15, 2021), no funding made available through this funding opportunity may be obligated for an award unless all iron, steel, manufactured products, and construction materials used in the project are produced in the United States. For additional information, visit NSF's [Build America, Buy America](#) webpage.



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These sourcing requirements require that all iron, steel, manufactured products, and construction materials used in Federally funded infrastructure projects must be produced in the United States. The awardee must implement these requirements in its procurements and this article must flow down to all subawards and contracts at any tier. For legal definitions and sourcing requirements, the awardee must consult NSF's Implementation of the Act on the [Build America, Buy America website](#).

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NSF Build America, Buy America Website

The NSF Build America, Buy America website is the best source of information on NSF implementation of the Act.

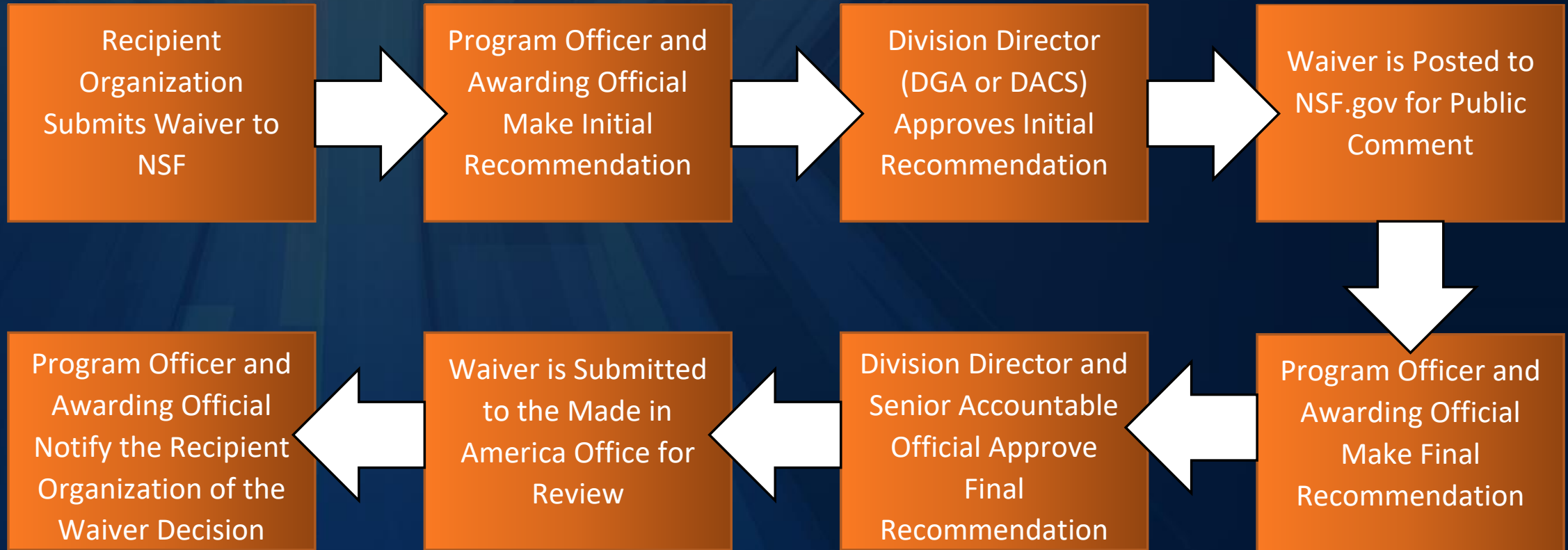
Submit and view all NSF waiver requests

Five Guidance Documents:

- NSF's implementation of the Act
- Frequently asked questions
- Guidance on submission of an NSF waiver request
- How to submit public comments
- How do I know if the Act applies to my award?



NSF Waiver Process



What are the first steps I should take?

- Review the three Terms and Conditions to determine if and how BABA applies to your award
- Review and examine the types of goods, products, and materials including iron, steel, manufactured products, and construction materials you anticipate you will purchase and determine if it is not made in the U.S.
- Begin performing market research on any foreign made items to locate possible U.S. sources
- Work with your PO, G/AO and LFO Liaison for advice or assistance
- Create BABA policies and procedures for your organization for documentation and waiver requests



How does this apply to my Award?

Do you have a financial assistance award from NSF issued after May 14, 2022, or funds added to an existing award after this date?

YES

Does the award have any funds to build, construct, alter, repair, upgrade or maintain infrastructure projects (structures, facilities, buildings, real property) and equipment in the United States?

YES

Are you using any iron, steel, manufactured products, or construction materials?

YES

Then **Build America, Buy America** most likely applies.



Research Infrastructure

NSF defines Research Infrastructure as any combination of facilities, equipment, instrumentation, computational hardware and software, and the necessary human capital in support of the same. Major facilities and mid-scale projects and research instrumentation are subsets of research infrastructure.

If you have a Research Infrastructure award, it may be that only Articles 45 and 46, apply but not 47 apply. For example, in one of the following situations:

- Construction, alteration, maintenance, or repair activities which are not taking place in the US.
- Not typical construction activities.
- Construction, alteration, maintenance, or repair activities which are not using any construction materials, manufactured products or iron or steel as listed in the Act.



Things for Recipients to Keep in Mind

- Application of BABA
- Early Engagement
- Market Research
- Waiver Process Assistance



QUESTIONS?

